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**‘The Land of Rape and Honey’:  
Settler Colonialism in the Canadian West**

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School of Social and Political Science  
University of Edinburgh  
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### Candidate's Declaration of Own Work

I hereby declare that this thesis has been composed solely by me and the work is entirely my own. This work has not been submitted for any other degree or professional qualification.

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Kathleen Ward  
30 April 2014

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## Abstract

Canada is widely regarded as a liberal, multicultural nation that prides itself on a history of peace and tolerance. Oftentimes set up in contrast to the United States, Canada's history of colonialism has been popularly imagined as a gentler, necessary, inevitable, and even benevolent version of expansion and subjugation of Indigenous populations. In recent decades scholars in the social sciences and humanities have challenged the rhetoric of Canada as a consistently benevolent and peaceful nation. They have pointed to the discontinuity between Canada's rosy image, drawn from foundational nation-building myths of benevolence, and the deeply rooted colonial narratives of necessity and inevitability that underpin those nation-building myths. This discontinuity manifests itself in far reaching patterns of social and economic disparity between Indigenous and settler populations over time across the nation. This reality is acutely seen in the Canadian West, as Canada's historic frontier.

This thesis re-problematizes narratives of Canadian nation-building from a regional perspective. It is argued that positioning the West as the frontier peripheral to Canadian 'civilisation' is part of a broader settler colonial logic that sees the contemporary manifestation of disparity between Indigenous and settler populations as emanating from uniquely backward, peripheral places in Canada, rather than challenging the fundamental benevolence of the Canadian nation. Through a close reading of two trials pertaining to an instance of multiple perpetrator sexual assault that occurred in Saskatchewan in 2003, I demonstrate how the complex web of interlocking systems of domination that oppress and privilege in trials do not emanate from the backwardness of the place in which they occurred, but are rather indicative of broader societal processes and power relations indicative of settler colonialism.

This thesis argues there is a conflation between western Canadian identity, and settler identity, owing to the foundational nation-building myths in which the West became Canadian. In moving forward, this thesis proposes an acknowledgment of the settler colonial nature of westward expansion and suggests practicing openness to considering different ways westward expansion might have been understood and experienced. Key to this process is learning to listen, learning to hear, learning to believe, and learning to see oneself implicated in the stories of those who experienced westward expansion differently from how it is popularly constructed in settler society. I begin here by proposing the complainant's voice in the trial be heard, and be believed. Her voice and her silence provides insight into understanding the oppressive power of settler-colonialism.

## List of documents by trial

### *R v Edmondson* [2003] QBC 1358

Volume I  
Volume II  
Volume III  
Volume IV  
Charge to the jury  
Cross-examination of Eleanor Anne McKenna  
Cross-examination of Melanie Campbell  
Cross-examination of Philip Charles Degruchy  
Evidence of Melanie Campbell and Linda Somer  
Final Arguments  
Judge's Sentence

### *R v Brown and Kindrat* [2003] QBC 1357

Volume I  
Volume II  
Volume III  
Volume IV

### *R v Kindrat* [2007] QBC 1357

Volume I  
Volume II  
Charge to the jury

### *R v Brown* [2008] QBC 1357

Volume I  
Volume II  
Volume III  
Volume IV  
Volume V

## Preface



The title of this thesis is a reference to the town motto of where the accused in the trials are from. 'Rape' is a reference to rapeseed.

Photo credit: Jack Ives, *Welcome to Tisdale: Land of Rape and Honey*, postcard, ca. 1960s, Parkland Publishing Ltd.

Not since the old days when 'the only good injun, is a dead one' syndrome ruled the Wild West, have the courts shown such a blatant anti-native sentiment. The population of Saskatchewan in the 19th century were starving their natives. Now, they rape, and freeze them. . .Shame on the judge, and shame on the courts of Saskatchewan, as that province continues along with its attacks on their Aboriginal population...Saskatchewan is a national disgrace!

*Denis Cabana, Canadian Broadcasting Corporation Viewpoint, September 2003*

This is just more of the racist whitewash that lives on in Saskatchewan. I think that Canada had better bring the Mississippi of the North, kicking and screaming into the twenty-first century.

*Lynette Fiddler, Canadian Broadcasting Corporation Viewpoint, September 2003*

Saskatchewan justice received a(nother) black eye as commentators from all over responded to the conditional sentence of one year house arrest for Dean Edmondson for the sexual assault of a 12-year-old Yellow Quill First Nation girl in Sept. 2001. 'Mississippi of the North', one commentator dubbed the province. This tars all Saskatchewanians.

*Norma Buydens, Canadian Centre for Policy Alternatives, 2005*

## Chapter 1 Introduction

The quotes above are in response to an incident of sexual assault that happened in 2001 near the town of Tisdale, Saskatchewan in western Canada. The outcome of this analysis is to show how western Canadian identity, the imagining of western Canada as ‘the Mississippi of the North’ and settler colonialism are interrelated. This, in turn, shows that the events and outcomes of the trials are not the result of an inherent regional mentality, but are rather the results of broader societal processes and power relations that constitute settler colonialism. In this line, while condemnatory of the accused’s actions and the outcome of the trials, the comments above nonetheless support the same settler colonial logic that justified the outcome of the trial about which they all express horror.

Dean Edmondson was one of three white men accused of sexually assaulting a twelve-year-old Indigenous<sup>1</sup> girl, referred to hereafter as Melanie Campbell.<sup>2</sup> The three accused, Dean Edmondson, Jeffrey Brown, and Jeffrey Kindrat, went on trial in the town of Melfort, Saskatchewan in 2003. Edmondson was convicted and given a two-year conditional sentence (despite what is mentioned in Buyden’s comment

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<sup>1</sup> The term ‘Indigenous’ is a broadly inclusive term that refers to people who might otherwise be called First Nations, Métis, status and non-status Indians, or Aboriginals. I have chosen to use the term ‘Indigenous’ and to capitalise the first letter of the term following from the work of Indigenous scholars such as Janice Acoose who says the term Indigenous is “more politically appropriate and literally correct” (see: Janice Acoose, *Iskwewak--Kah’ Ki Yaw Ni Wahkomakanak: Neither Indian Princesses nor Easy Squaws* (Toronto: Women’s Press, 1995), 13) When referred to in this text, ‘First Nation’ is synonymous with the term ‘Indian’ as defined by the Indian Act. It includes all three categories described in the Act: status Indians, non-status Indians and treaty Indians. The term ‘First Nations’ does not have any legal standing in Canada in the same way ‘Indian’ does, but it is generally considered a less offensive term when referring to people with a legal, state-defined identity as ‘Indian’. A more specific definition of Métis will be provided in the next chapter as a constitutionally recognised Aboriginal group. The term ‘Aboriginal’ is also a broadly inclusive term, analogous to ‘Indigenous’. While I do not use this terminology myself, many of the authors I quote do use the term ‘Aboriginal’, particularly John Ralston Saul. When discussing his work in the next chapter, I mimic his use of the term ‘Aboriginal’, which should be understood as interchangeable with ‘Indigenous’ for the purpose of my analysis.

<sup>2</sup> This is not her real name. Chapter 3 will reflect on the issue of anonymity.

above in which she says Edmondson was sentenced to one year). Jeffrey Brown and Jeffrey Kindrat were tried together in a trial separate from Edmondson and were both acquitted of all charges. This thesis provides a close analysis of the trial transcripts in *R v Edmondson* and *R v Brown and Kindrat* as a means of reflecting on Canada as a contemporary settler colonial society and the western region therein.

In this introductory chapter I will provide an account of how I came to the research questions that inform my analysis. I will also provide a chapter outline of the thesis and the methodological and theoretical contribution I seek to make in my analysis of the trials. I provide a brief account of what occurred in the case colloquially known as the ‘Tisdale (or ‘Melfort’) rape case’ for the sake of introductory context in reading chapters 2 and 3, before the analysis of the trials themselves begin in chapter 4. Firstly, I set the scene through my own eyes as a settler Saskatchewanian who calls the place Lynette Fiddler refers to as ‘the Mississippi of the North’ my home.

## Setting the scene

Growing up in Saskatchewan, not once did I hear the word ‘colonialism’ in school. We learned about colonial events without them ever being labelled as such. Colonisation did not need to be named. It was synonymous with the inevitability of progress, the inevitability of Canada, and the inevitability of our very presence there. We studied the points of historical friction, which hinted at the formal colonisation we all knew must have taken place, but this history was not part of us. We were abstracted from this history by a set of premises that legitimated our presence on the prairies. The land was pretty well empty anyhow. The Indigenous lifestyle was

unsustainable and our presence was part of the inexorable process of development. Our ancestors made something of the land. If we had not settled that land, it would have been taken over by the United States. Everything that was done, we learned, was necessary and inevitable. What needed to be done was all done in the kindest way possible – different from how ‘they’ treated ‘their’ Indians in the United States – Canada was, and is, a peaceful and benevolent nation.

We never acknowledged or questioned that we were the benefactors of an imperial project. The legacy of our region did not start with the varied Indigenous groups who had been there for thousands of years, nor did it start with the fur traders who arrived much later and developed intimate relationships with their Indigenous trading partners, a distinct cultural group who would later come to be known as the Métis. It all started when these groups were subjugated to make way for en masse white, agrarian settlement. The history of my ancestors in Canada started when the previous, Indigenous leaders were hanged for treason, when they were organised out of the way of settlement, when their children were taken away to residential schools, and when they had signed their collective futures over to the Crown. We were only able to abstract ourselves from this history by not acknowledging the existence of a larger imperial project that necessitated our presence as settlers. Our colonisation gave legitimacy to Canada’s claim to the land, and it was justified through the racism inherent in lands being called mostly empty, people being understood to be deficient and uncivilised and not making anything of that land, and most insidious of all in Canada’s version of colonialism, the profound belief that it was a much gentler version of colonisation than what happened elsewhere. It was, we were told, truly benevolent. For it to have been anything different would be in direct conflict with



what it means to be Canadian.

The legacy of the region that most of my classmates and I were a part of began with the Dominion Land Survey of 1872. The Dominion Land Survey facilitated orderly en masse white immigration and, by proxy, shuffled Indigenous people out of the way of settlement. The Dominion Land Survey made this previously vast and chaotic space navigable. Within the broader *Dominion Lands Act* that detailed the particular aims, objectives and methodical organisation of immigration to the prairies, the survey ordered the western territory into a huge number of small squares of land called ‘townships’.

Each township was six miles long and six miles wide, with a correction line every so often to account for the curvature of the earth as the squares crept northward. The townships were further divided into thirty-six, one-mile square sections. Each section designated for homesteading was divided into quarters, which could be purchased by any adult male for the small sum of ten dollars.<sup>3</sup> Our history began here, when my ancestors and the ancestors of many of my classmates found themselves in the newly opened/cleared West with their own quarter section of land, neatly organised into ethnic blocs of settlers. If someone were to ask where my homesteading ancestors’ quarter section of land was, they would be expecting an answer in a particular format: NE- 36-39-22-W2: the north-east corner of section 36 in township 39, range 22, west of the second meridian. From these coordinates, they would also know that my homesteading roots in the province are German Catholic. The rigour with which the geographic space of Saskatchewan was organised for

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<sup>3</sup> Western Canadian historian Sarah Carter details in *Montana Women Homesteaders: A Field of One’s Own*, how women were “deliberately excluded from the privilege of homesteading under Canada’s legislation,” in comparison to the hundreds of women per county who homesteaded just south of Saskatchewan in Montana. See: Carter, *Montana Women Homesteaders*, 36.

settlement, legislated through the *Dominion Lands Act* is, according to the Government of Canada, “the world's largest survey grid laid down in a single integrated system,” which “led to the creation of more than 1.25 million homesteads.”<sup>4</sup>

The history we belonged to was a mythology of rugged white settlers who travelled many miles from their civilised European homes in the late nineteenth and early twentieth century to take up ‘empty’ lands in the harsh wilderness of the western plains in order to build a life, a community and a nation. Each landowner was organised into his own perfectly square plot of land and given three years to build a house and make his land into a working farm. Settlers would earn their right to keep the land by making it productive. Indeed, this is how we continue to unquestioningly justify our right to the land as settlers, with such minds as Michael Ignatieff’s stating that “those who came later have acquired legitimacy by their labours. . . to point out the legitimacy of non-aboriginal settlement in Canada is not to make a declaration about anyone’s superiority or inferiority, but simply to assert that each has a fair claim to the land.”<sup>5</sup> Such a statement helps all Canadians remove themselves from the violent manner in which this ‘fair claim’ to the land was enacted.

The *Dominion Lands Act* also solidified the relationship of white western settlers with the federal government. As the name of the legislation suggests, they were taking up residence on the Dominion’s land. The region covered by the Dominion Land Survey (the present day provinces of Alberta, Saskatchewan and

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<sup>4</sup> “Western Land Grants (1870-1930),” last modified 28 September 2007, <http://www.collectionscanada.gc.ca/databases/western-land-grants/001007-130-e.html>.

<sup>5</sup> This statement was made during the 2000 Massey lecture series, qtd. in Sherene Razack, *Race, Space and the Law: Unmapping a White Settler Society*, Introduction, (Toronto: Between the Lines, 2002), 2.

Manitoba, also referred to here as ‘the West’) was to be the extractive resource base for an industrialised central Canada. Unlike the provinces that had wilfully joined Confederation in the mid to late nineteenth century, the prairies were not given ownership over their natural resources until 1930, which was also the year homestead purchases ended. It was only on behalf of and for the progression of the Dominion that my ancestors were able to exercise a partial claim to the lands owned by the Dominion. The West was, in effect, a colony of the East.<sup>6</sup>

The organisation, management and meaning of different spaces in this one particular place have played a central role in the lives of western Canadian people for well over a century. Colonisation is written into the gridded landscape that surrounds us, and is as much a part of the lives of western Canadians now as it was in the late nineteenth century. To be a settler in Saskatchewan, historically and presently, is to hold a place of relative privilege that allows one to be genuinely distressed by the modern day manifestations of colonialism, while simultaneously seeing no need to entertain competing narratives of how one came to be here and why ‘things are the way they are’.

## The way things are

A representation of ‘the way things are’ can be found in marked differences in quality of life indicators and socio-economic disparity between Indigenous and settler populations across the country.<sup>7</sup> Indigenous people in Canada are disproportionately poor, which is correlated to difficulties in educational attainment, higher rates of ill

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<sup>6</sup> Gibbins, Berdahl, and Gibbins, *Western Visions, Western Futures*, 30.

<sup>7</sup> Assembly of First Nations, *Fact Sheet: The Reality for First Nations in Canada*; Assembly of First Nations, *Fact Sheet: First Nations Post-Secondary Education*.

health, and lower overall physical and mental well-being.<sup>8</sup> A 2013 report on child poverty notes that while the national non-Indigenous child poverty rates break down relatively evenly across the country, with provincial rates matching the national average, this is not the case with regards to Indigenous children.<sup>9</sup> The disparity between Indigenous and non-Indigenous children is particularly acute in the prairie provinces of Saskatchewan and Manitoba, where Indigenous children are four times more likely to live below the poverty line.<sup>10</sup> In Saskatchewan, 64% of Indigenous children live below the poverty line, compared to 16% of non-Indigenous children.<sup>11</sup>

The report shows the far-reaching implications of poverty for the overall well-being of Indigenous children, noting that “Indigenous children trail the rest of Canada’s children on practically every measure of well-being: family income, educational attainment, crowding, homelessness, poor water quality, infant mortality, health and suicide.”<sup>12</sup> Indigenous people are also far more likely to be the victims of violent crime compared to non-Indigenous people, suffering elevated rates of homicide, sexual assault and robbery with a weapon.<sup>13</sup> Indigenous women, in particular, suffer a high rate of violence compared to non-Indigenous women.<sup>14</sup> Statistics from the Native Women’s Association of Canada say an Indigenous woman

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<sup>8</sup> Collin and Jensen, *A Statistical Profile of Poverty in Canada; Poverty as a Social Determinant of First Nations, Inuit, and Métis Health*; Howe, *Bridging the Aboriginal Education Gap in Saskatchewan*; Wilson and Macdonald, *The Income Gap Between Aboriginal Peoples and the Rest of Canada*.

<sup>9</sup> Macdonald and Wilson, *Poverty or Prosperity: Indigenous Children in Canada*, 16.

<sup>10</sup> Ibid.

<sup>11</sup> Ibid.

<sup>12</sup> Ibid., 19; An earlier report written by the same authors point to deep income inequalities between Indigenous and non-Indigenous Canadians See: Wilson and Macdonald, *The Income Gap Between Aboriginal Peoples and the Rest of Canada*.

<sup>13</sup> Brzozowski, Taylor-Butts, and Johnson, *Victimisation and Offending among the Aboriginal Population in Canada*; Perreault, *Violent Victimisation of Aboriginal People in the Canadian Provinces, 2009*.

<sup>14</sup> Brennan, *Violent Victimisation of Aboriginal Women in the Canadian Provinces, 2009*.

is three times more likely to be killed by a stranger than a non-Indigenous woman.<sup>15</sup>

## Shifting the focus

Given the continuing segregated nature of space between Indigenous and settler populations owing to the legacy of the *Dominion Lands Act* and all it implied, the reality of this disparity is removed from the immediate view of white settler society. Like learning the history of my ancestors and my region and never hearing the word ‘colonialism’, I grew up in the city with highest violent crime rate in Canada and would have never known that to be the case if reports from Statistics Canada and national headlines had not alerted me to that fact. I was aware of there being a ‘rough’ part of town, the boundaries of which were unmistakably racialised. I was aware, too, that sometimes my young male peers would drive through what were said to be the really bad areas for a thrill when there was not much else to do but drive around. Being physically removed from this space, it is easy for white settlers to imagine that the problem is the space itself and the people in it. The conversation then to be had is one with historic corollaries of wondering what to do about ‘the Indian problem’.<sup>16</sup>

An example of the way these conversations are framed as an ‘Indian problem’ is the local response to a report published by Criminal Intelligence Service Saskatchewan (CISS) in 2005. The report says: “it is anticipated that gang-related crimes and recruitment will continue to escalate throughout the Province given our

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<sup>15</sup> Native Women’s Association of Canada, *Fact Sheet: Missing and Murdered Aboriginal Women and Girls*.

<sup>16</sup> This turn of phrase was coined by Sir Duncan Campbell Scott, Minister of Indian Affairs from 1913-1932. See: Leslie, “Indian Act.”

demographic trends.”<sup>17</sup> The demographic trends referred to are that Indigenous people were, and still are, the youngest and fastest growing segment of Saskatchewan’s population.<sup>18</sup> The report details law enforcement’s concern with the rise of “Aboriginal-based gangs.” The Saskatchewan arm of Canadian Broadcasting Corporation (CBC) News ran a week-long series of short radio documentaries heard across the province on the Morning Edition. The documentary was called, “They’re young and often Aboriginal – and they say they’re waging a war.”<sup>19</sup>

In one morning discussion, there is the recording of a reporter saying that some Indigenous youths see their involvement in gangs as “part of a struggle against white society.” The clip cuts to the voice of a young Indigenous girl who is being held at a youth correctional facility for young offenders. She says, “it’s kind of like Indians against white people.” Cutting back to the main show, the host asks the reporter who is in studio with her, “should white people be afraid?” Joyce Green points out that, while this could have been an opportunity to talk about the broader societal issues that contribute to gangs being an attractive option for Indigenous youth, the conversation was instead framed around white fear of the other.<sup>20</sup> In the trials of *R v Edmondson* and *R v Brown and Kindrat*, fear of the other transgressing into white spaces is also an omnipresent theme. That a twelve-year-old girl might be constructed as a threat to white settler society such that her attackers faced such

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<sup>17</sup> 2005 *Criminal Intelligence Trends: Aboriginal-based Gangs in Saskatchewan*, Criminal Intelligence Service Saskatchewan, Vol. 1, Iss. 1, (Winter 2005): 1.

<sup>18</sup> *Aboriginal Peoples in Canada: First Nations People, Métis and Inuit*.

<sup>19</sup> The week-long program on the Saskatchewan’s Morning Edition aired from March 21-25, 2005. The recordings are no longer available on the CBC website and thus these quotations have been borrowed from an article by Joyce Green. The analysis here is also borrowing heavily from: Joyce Green, “From Stonechild to Social Cohesion: Anti-Racist Challenges for Saskatchewan,” in *I Thought Pocahontas Was a Movie”: Perspectives on Race/culture Binaries in Education and Service Professions*, ed. Carol Schick and James McNinch (Regina: CPRC, 2009), 129–150.

<sup>20</sup> *Ibid.*, 145.

minor, if any, repercussions for their actions was the catalyst that caused me to reflect on the possibility that what had been framed as ‘an Indian problem’ might in fact be a “settler problem.”<sup>21</sup> Before explaining how I came to the research questions, I will provide a brief account of the sequence of events in the Tisdale case.

## The Tisdale case

The 30<sup>th</sup> of September 2001 was a Sunday. Melanie had a fight with her mother about going to church and decided to leave home later that afternoon. Wearing jeans, a pair of running shoes, a white button-up blouse and a black hooded sweatshirt (colloquially known as a ‘bunnyhug’), Melanie packed her school bag with a Bible and left her home in Porcupine Plain, Saskatchewan. She walked to the nearest town, which was just over ten kilometres away. After a couple hours of walking along the highway, she came to Chelan. The available Statistics Canada census data shows that Chelan had a total population of 52 in 2011, which was a 15% increase from the previous census year.<sup>22</sup> Like many small towns in Saskatchewan, the only public dwelling in Chelan is a town hotel bar. Melanie sat down on the cement steps of that hotel bar.

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<sup>21</sup> Roger Epp, “We Are All Treaty People: History, Reconciliation, and the ‘Settler Problem,’” in *Dilemmas of Reconciliation: Cases and Concepts*, ed. Carol Prager and Trudy Govier (Waterloo, ON: Wilfrid Laurier University Press, 2003), 223–244. The turn of phrase “settler problem” used here is borrowed from Epp’s 2003 publication, but it is also worthwhile to note that the reframing of the “Indian problem” as a “settler problem” is part of a broader shift in decolonising literature. A key marker of this shift is the journal *Settler Colonial Studies*, which started in 2011.

<sup>22</sup> Statistics Canada Government of Canada, “Statistics Canada: 2011 Census Profile,” February 8, 2012, <https://www12.statcan.gc.ca/census-recensement/2011/dp-pd/prof/details/page.cfm?Lang=E&Geo1=DPL&Code1=470019&Geo2=PR&Code2=59&Data=Count&SearchText=&SearchType=Begin&SearchPR=01&B1=All&Custom=&TABID=1>.



Figure 1.1 – Melanie's path<sup>23</sup>  
Source: Google Maps

The three accused were inside the bar having a drink and playing on the Video Lottery Terminals (VLTs). VLTs are similar to slot machines in a casino. They are owned and operated by the Saskatchewan Liquor and Gaming Authority and can be found in most any establishment in the province that serves alcohol.<sup>24</sup> The three accused left the bar and saw Melanie on the steps as they made their way to Edmondson's truck. The accused got into Edmondson's truck and drove back past Melanie and asked her if she needed a ride. She said it was getting dark and she did not know how else she was going to get out of Chelan, and so she agreed (R v Edmondson, Evidence of Melanie Campbell and Linda Somer: 57).

Edmondson was driving, Brown was in the front passenger seat, and Melanie and Kindrat were in the back seat. The three men were drinking beer in the truck. Kindrat offered Melanie a beer. She declined several times and then eventually agreed (Ibid: 59). The four drove north to another small town called Mistatim, approximately an hour's drive away on gravel roads. They stopped at the hotel bar in

<sup>23</sup> Note the pale grey lines in the background. Those lines are the grid roads that mark the boundaries between sections of land divided by the Dominion Land Survey. One section = one mile squared. There are 6 squares, east to west, between Porcupine Plain and Chelan. Melanie walked just over six miles to Chelan, or roughly ten kilometers.

<sup>24</sup> VLTs in Saskatchewan: *Factsheet*.



Mistatim for more beer and snacks. Leaving the hotel bar in Mistatim is the last thing Melanie remembers until she became aware that the accused were “doing stuff” to her (Ibid). Edmondson recounts that, once he was back in the truck and driving, Melanie crawled into his lap (R v Brown and Kindrat, Vol. II: 439). Melanie remembers becoming conscious on Edmondson’s lap inside the truck, with Brown pulling her pants down and her trying to pull them back up (R v Edmondson, Evidence of Melanie Campbell and Linda Somer: 65).

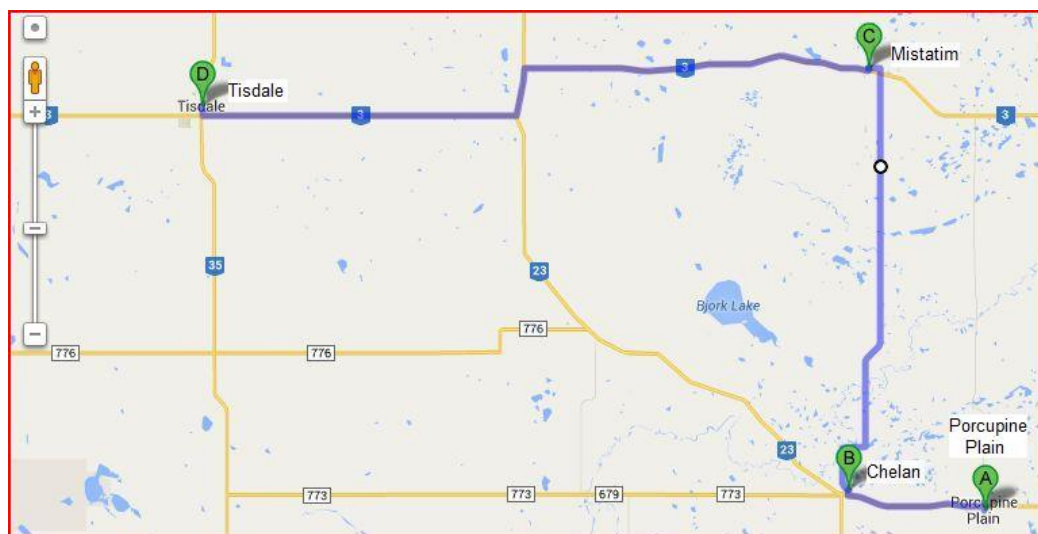


Figure 1.2 – The Space Travelled  
Source: Google Maps

Edmondson says he then pulled over on a gravel approach to a farmer’s field. He says he “attempted” to have intercourse with Melanie, after which Brown, and then Kindrat followed (R v Brown and Kindrat, Vol. II: 427). Melanie then started “passing out” and the accused dressed her and “put her back in the truck and started driving” (Ibid: 468 and 470). They then report she was “acting weird,” and that she asked to be driven to her friend Jesse Pierce’s house in the nearby town of Tisdale (Ibid: 469). She gave them a phone number. Brown called ahead and spoke to Jesse’s father, Gary Pierce, and told him they had picked up a young girl hitchhiking

who was intoxicated and was asking to be dropped off at his house. By the description, Gary thought it was his son's girlfriend Kori, who was a close friend of Melanie's. He told the accused to bring her over. Jesse told his dad it was not Kori, and that Kori had told him their friend Melanie had been reported missing to the police by her parents earlier that day. Kori called the RCMP to let them know she thought Melanie had been found.

When the truck arrived at the Pierce residence, Jesse and a friend named Mike (or 'Big Mike,' as Gary and Jesse call him) from next door helped her out of the truck. To Gary, Jesse and Mike, Melanie appeared frightened. She was yelling, holding her hands between her legs, and was unable to walk on her own (R v Edmondson, Vol. II: 372, 379, 395, 404). She was not wearing her shoes. Brown got out of the truck and handed Gary Melanie's backpack and her shoes. He thanked Gary for "taking her off their hands" and warned him that there might be vomit on her backpack and her shoes (Ibid: 370). Once inside the Pierce's home Melanie continued to cry and was assisted to the washroom where she threw up (Ibid: 394). Gary's wife suggested he take Melanie to the hospital. Melanie was still unable to walk on her own and was helped to the vehicle again by Jesse and his friend Mike.

RCMP member Constable Degruchy met Melanie, Gary, Jesse and Mike at the hospital. He recommended that Gary, Jesse and Mike go home. He suggested to the doctor on duty, Dr. Linda Somer, that a sexual assault kit be performed. Dr. Somer was apprehensive because of Melanie's age as well as her behaviour, about which Somer said "I was afraid, she, you know, she must have had something awful happen to her" (R v Edmondson, Evidence of Melanie Campbell and Dr. Linda Somer: 6). Melanie's father was on his way to the hospital in Tisdale from Porcupine

Plain. When he arrived, Constable Degruchy asked him to sign a consent form for permission to have a sexual assault kit performed on Melanie, which he did. Dr. Somer sedated Melanie and performed the sexual assault kit. Melanie spent a couple nights recovering in the Tisdale hospital, and on the 2<sup>nd</sup> of October 2001 she was driven to Saskatoon. Dr. Somer recommended that Melanie see a specialist in the city, Dr. Anne McKenna, who had expertise in child victims of sexual assault.

Dr. McKenna performed another internal examination on Melanie, now two days after the assault. Dr. McKenna described Melanie as “extremely cooperative” and “too compliant” (R v Edmondson, Vol. III: 533). She said Melanie did not have adequate self-esteem, consistent with having been abused over a long period of time (R v Edmondson, Cross-examination of Dr. Eleanor Anne McKenna: 25-26). She also testified that Melanie’s physical development at the time of the assault was consistent with that of an adult woman’s; while “lots of 12 year olds have not” reached menses, McKenna said, Melanie had, which would make her look older than her stated age (Ibid: 7-9).

DNA was found on Melanie’s underwear, which had been sent away with the sexual assault kit for testing. The DNA did not match any of the accused’s DNA. The results suggested the DNA belonged to someone related to Melanie. Constable Degruchy suspected Melanie’s brother. Melanie and her siblings were removed from their family home by Child Protective Services in 2002 and placed in separate foster care families. Melanie was sent to live with a family in Nipawin, 130 kilometres north of Porcupine Plain. Melanie attempted suicide while in foster care. According to her foster mother, when Melanie was hospitalised she experienced hallucinations in which she saw her father in every corner of the room (R v Edmondson, Vol. III:

569). At the preliminary hearing for *R v Edmondson* Constable Degruhy collected a cigarette butt that had been discarded by Melanie's father. It was confirmed from the cigarette butt that the DNA found on her underwear did belong to Melanie's father. Melanie's foster mother told the court Melanie confided in her that her father drank a lot of alcohol, beat her mother and had been sexually abusing Melanie since she was two years old (Ibid). Constable Degruhy began an investigation into Melanie's father while *R v Edmondson* and *R v Brown and Kindrat* were on-going.

*R v Edmondson* and *R v Brown and Kindrat* began in 2003. They took place in the small Saskatchewan city of Melfort, numbering around 5,500 people.<sup>25</sup> *R v Edmondson* happened first over a two-week period in May 2003. *R v Brown and Kindrat* happened a few weeks later in June 2003. Dean Edmondson was convicted of sexual assault while being party to sexual assault. He was sentenced to two years of house arrest. Brown and Kindrat were both acquitted of all charges. They faced re-trials in 2007 and 2008 respectively, which are not dealt with here for reasons explained in chapter 3, but the results were that Kindrat was again acquitted and Brown's case resulted in a hung jury. The charges in Brown's case were stayed and he avoided going to trial for a third time. In between Kindrat's 2007 retrial and Brown's 2008 retrial, Melanie's father was convicted in the same Melfort courthouse on charges of sexual assault. Between the years of 1979 and 1985 Melanie's father sexually assaulted three of his nieces and one nephew.<sup>26</sup> He was convicted as a young offender, being between the ages of 12 and 17 when he perpetrated the assaults, but he was sentenced as an adult to two years in prison. He was not

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<sup>25</sup> Government of Canada, "Census Subdivision of Melfort, CY (Saskatchewan) - Census Subdivisions - Focus on Geography Series - Census 2011."

<sup>26</sup> "Porcupine Plain Man Guilty of Assaulting Three Nieces, Nephew."

convicted on any charges related to Melanie. For her part, Melanie maintains that her father did not sexually abuse her.<sup>27</sup>

## Coming to the research questions

I was always aware, growing up in Saskatchewan, that there was anxiety around the issue of race. More than being aware of the rough end of town, I had heard through allegory from members of my family about the dangers that could befall a girl mistaken for being Indigenous. Having a darker complexion, I learned, meant that if you were in the wrong place, or with the wrong people, others might not be able to tell you were from a ‘good family’. In October of 2001, I had just turned seventeen. CBC radio was playing in the background while I was getting ready for school. The news reported that a twelve-year-old Indigenous girl was recovering in hospital after allegedly being sexually assaulted by three white men in their twenties from the town of Tisdale. The report said they picked her up off the street, drove her outside of town and took turns sexually assaulting her on a deserted grid road.

I could not imagine anything more terrifying. My instinctual response was fear based concern that someone might mistake me for Indigenous, as I had been warned about. I was then, and I am now, embarrassed that this is what came to my mind. But, an honest reckoning of how I came to the research questions explored in this thesis necessitates that I explain how I actually got here. I have not come to the point of writing this thesis from somewhere beyond settler society where I presume to be better than it. I am, still, a settler from Saskatchewan. While I know what the

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<sup>27</sup> Melanie says this in her victim impact statement (R v Edmondson, Vol. IV : 748) as well as years later to the media after Brown’s trial resulted in a hung jury. See: Purdy, “Young Sex Assault Victim Spent Seven Years in Court, Finally Moving on.”

Dominion Land Survey represents, in practice, I am comforted by its presence. While I know what my ancestors' settlement in Saskatchewan was a part of, I am still heartsick when I hear stories of their struggle on the Canadian frontier. I do not presume to be capable of identifying all the ills of settler society, what with the existential difficulty we all have in seeing ourselves clearly. I am, rather, someone implicated in it and trying to find my way out.

Hearing about the Tisdale case marked a turning point in my own thinking about the place I was from. It opened me up to seeing things I had not seen before, and required that I question much of what I took for granted about the kindness of home. I became passionate about unearthing the history of how the West, and how Saskatchewan, came to be what they are today. I sought out the sources of our collective mythology, responsible for creating the 'Truth' I had taken for granted. This is the root of where this project began. Once I had delved deeply into the history of the West, I sought a case through which I could see the continuity from past to present. I had been following the Tisdale trials in the media since 2001, and as the case that marked a turning point in my own perspective, it is what readily came to mind. Following this trajectory of thought, this thesis explores the following questions:

- i. How do we settler Canadians in the West make sense of the disparity between Indigenous and settler populations in the region?
- ii. How can the history of the region help us understand where this disparity has come from and to what extent is the history still manifested in contemporary moments of conflict?
- iii. Proposing *R v Edmondson* and *R v Brown and Kindrat* as a contemporary moment of conflict,

what aspects of privilege and oppression are made evident in the trials?

- iv. What do the trials of *R v Edmondson* and *R v Brown and Kindrat* tell us about how differences between Indigenous and settler communities are constructed in the West?

## Thesis outline

In order to investigate these questions I begin with an analysis of the historical literature around the development of the West. Many of the sources I refer to are the ‘great white men’ of Canadian history. My interest in analysing these sources is linked to understanding the mythological place of the West in Canada, rather than providing what would be a proper historiography of the place of the West in the discipline of Canadian history. The historical analysis of the place of the West in Canada is the subject of chapter 2.

In chapter 3, I link the historical account to the theoretical perspective and the methodological choices I have made in analysing the trial transcripts. Whereas chapter 2 elucidates the process through which settler colonialism occurred in the West, chapter 3 theorises what it means for Canada to be a settler colonial society with the West positioned as its frontier. This provides the methodological support for identifying what settler colonialism looks like in the present and how it manifests in the Tisdale case. I argue that an analysis based on Sherene Razack’s conception of interlocking systems of domination is best situated to understand how dynamics of privilege and oppression function in settler colonial society and how difference between settler and Indigenous are constructed. My analysis of the trials is one where privilege, oppression and difference, are revealed across lines of race, space and gender.

The latter half of chapter 3 is dedicated to describing the process of undertaking the research and the methods of analysis. Before concluding with a reflexive ethical review of the research process, I identify three key themes emerging from the trial transcripts that speak to privilege, oppression, and the construction of difference: normalising the behaviour of the accused, constructing the truth from the accounts of the accused, and othering Melanie. Chapters 4, 5 and 6 each focus on one of these themes. Each chapter of analysis builds on the next, in order to show the work done in the courtroom to diminish the severity of three white men committing a multiple perpetrator sexual assault on a twelve-year-old Indigenous girl. I finish the analysis portion of the thesis with Melanie's account of what happened. Suggesting that her version of events be believed, I conclude by reflecting back on what the narrative looks like when the accused are believed at her expense.

## Contribution

The contribution of this thesis is both methodological and analytical, and carries with it social and political implications. I have done a close reading of the trial transcripts for *R v Edmondson* and *R v Brown and Kindrat*, contextualised in the broader social and political place of the Canadian West. I propose that the explanatory power of the trials comes from an analysis that sees the trials at the centre of a tangled web of expertise and regulatory actors. By conceiving of the trials as such, I defy any analysis that seeks to locate the events and outcome of the trials as emanating from a perceived 'backwardness' of the geographic location in Canada where it occurred. I seek something more than a description of where and how this trial happened; I seek



a way forward. I seek a way to challenge the conflation of settler identity and western Canadian identity.

With that, I begin with the exploration of the place of the West in Canada.

## Chapter 2

### The West in Canada: Building a nation

“...nations are narrations.”

Edward Said (Culture and Imperialism, xiii)

“It is only by carefully studying the past,” says Emile Durkheim, “that we can come to anticipate the future and to understand the present.”<sup>1</sup> It is this basic premise that informs the content of this chapter. Below is the history of how the West became Canadian. Contained in this story are the historical milestones of the region that brought the West into confederation along with the varied interpretations of these events proposed by historians and social scientists from the early to mid-twentieth century and onwards that speak to the place of the West in the broader national project. To this end, this chapter will explore the events of the 1869-1870 Resistance and the 1885 Rebellion as they relate to the development of the West as the Canadian frontier, as well as themes of Indigenous barbarity and anxiety in the face of progress and benevolent Canadian expansion.

I will simultaneously discuss the rough grouping of policies that heavily featured the control and development of western lands which came to be known as the National Policy. The National Policy establishes the North West Territory as the extractive resource base for central Canada (also referred to here as ‘the East’). I will discuss the social and political impact of the 1869-1870 Resistance and 1885 Rebellion before moving on to explore the works of ‘classic’ Canadian historians George Stanley, Donald Creighton and William Lewis Morton writing on the topic. Stanley, Creighton and Morton focus heavily on the 1869-1870 Resistance and the

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<sup>1</sup> Durkheim and Emirbayer, *Emile Durkheim*, 245.

1885 Rebellion, using the West's absorption into the nation in order to create a unifying Canadian narrative. The legacy of their work is, in part, establishing that the interpretation of these conflicts is critical to understanding Canadian nationhood. Their account of events have been challenged considerably by academic historians and social scientists (some of whom are also represented in this chapter), but their foundational works nonetheless represent the starting point for considering where the West and where Indigenous people figure in the story of Canadian nation-building. Indeed, the narratives that they propose are the cornerstones of a belief in Canada's benevolent colonial expansion, cornerstones that continue to loom large, with special significance in the West as Canada's frontier.

In arguing that attempts to unify Canada through narratives of nation-building as told through the armed conflicts of 1869-1870 and 1885 comes at the expense of recognising the autonomy of the West, I will draw from later scholarship that includes a regional perspective. I will be speaking to two bodies of literature as they relate to the effect of colonialism and the rhetoric of Canadian expansion on Indigenous people and the settler population. These are stories that are generally told separately; one as the history of Indigenous people in Canada, and the other as the history of western alienation that sets the West as Canada's continuing frontier. This is not a perfectly fluid and linear account of the history of the West, as the intention is to read the oppression of Indigenous people in the West alongside the developing sense of western alienation.

Demonstrating how these themes are hemmed together in the national Canadian consciousness, I engage with John Ralston Saul's 2008 publication, *A Fair Country: Telling Truths About Canada*. Saul, a popular Canadian political thinker

and philosopher, proposes a contemporary, unifying counter-narrative to what is proposed by earlier nation-building historians. Saul identifies Canada as a nation with fundamentally 'Aboriginal' roots. Instead of being on the glorifying side of the West's absorption into Canada, he is on the condemning side. His way of acknowledging guilt for the colonial relationship between the East and the West that came with the events of 1869-1870 and 1885 demonstrates how the value ascribed to 'classic' Canadian nation-building myths might change from one region to the next. There may be more or less at stake when the value of the myth is at risk. I argue that Saul's interpretation, while intending to be inclusive of the West as a historically Indigenous space, reifies narratives of the West as less civilised than the East, fanning the flames of western alienation. Saul's construction of the West as less civilised than the East in order to create a new, unifying identity demonstrates why challenging earlier Canadian nation-building myths of benevolent expansion might be more difficult in the West.

This history provides the necessary background for understanding the narratives entrenched and meanings inscribed via Canadian nation-building myths that resurface in *R v Edmondson* and *R v Brown and Kindrat*. This chapter provides a broader context that complicates an easy dismissal of the events and outcome of the trials as the product of a particularly racist, backward or rural part of Canada. In reading Indigenous oppression and the development of western alienation together in this history, narratives that situate the West as Canada's frontier and the national anxieties wrapped up in the repetition of innocent white expansion and Indigenous degeneracy are connected to one another. Western Canadian identity is inextricably tied to the identity of the rugged settler on the frontier, dependent on the myth of

benevolent Canadian expansion to justify its existence and place within the nation. In order to clarify the impact of this perspective, I begin with the historical myth-making, starting in 1869.

## **A. The 1869-1870 Resistance**

Under the leadership of Louis Riel, a French-speaking Catholic Métis, a substantial resistance to the transfer of Rupert's Land from the Hudson's Bay Company (HBC) to the Dominion of Canada was mounted in 1869. The Métis, which loosely translates from Latin as 'mixed blood', are a constitutionally recognised distinct cultural group in Canada who came into existence as a result of generations of relations between white fur traders and their First Nations trading partners.<sup>2</sup> The National Committee of the Métis of Red River, of which Louis Riel was the secretary, did not oppose absorption into the Dominion. They wanted, as all the provinces who joined in confederation a few years before had been given, the opportunity to negotiate the terms of their incorporation into the state so they may join as "citizens rather than as colonial subjects."<sup>3</sup> They were seeking to be a province, like the others, as opposed to a territory.

The Prime Minister of Canada, Sir John A. Macdonald, appointed well-known Canadian expansionist and Father of Confederation William McDougall as the Lieutenant Governor of the western region, which some have suggested seemed a rather insensitive choice given McDougall's reputation as a verbose, anti-Catholic, Ontario Protestant.<sup>4</sup> McDougall was promptly sent west to declare Crown authority

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<sup>2</sup> Van Kirk, *Many Tender Ties*, 21.

<sup>3</sup> Thompson, *Forging the Prairie West*, 38.

<sup>4</sup> McDougall was widely known as an Orangemen; a member of a protestant, fraternal organisation

over Rupert's Land and begin surveying in preparation for what the Dominion Government hoped would be en masse white, agrarian immigration. McDougall worked his way west by travelling south of the Great Lakes, ducking into the United States and arriving at the southernmost border of Rupert's Land. The route was shorter and less formidable than the terrain north of the Lakes. McDougall was met at the border and was denied re-entry into the recently acquired Canadian territory by inhabitants following Riel's direction. McDougall was infuriated and proceeded to call "on all loyal subjects of Queen Victoria to suppress the Métis insurrection."<sup>5</sup> A small population of Ontario Protestants living in the North West Territory heeded McDougall's call and took up arms. Riel took on the formal leadership of the region by setting up a provisional government within days of McDougall's attempted entry. Many of those who took up arms were arrested by Riel's provisional government. Riel ordered the execution of one of the captives – a reportedly anti-Catholic Ontarian, Thomas Scott. "We must make Canada respect us" Riel is reported to have said.<sup>6</sup> The move inflamed Ontarians who pressured Prime Minister Macdonald to capture and hang Riel. Macdonald obliged and dispatched a military force to deal with the 'rebels' of Red River to pacify the anger of Ontarians.

In the end, Macdonald agreed to negotiate with westerners, and the 'postage stamp' province of Manitoba, so nicknamed in reference to its minute size, was

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that was widespread in Ontario throughout the nineteenth and early twentieth century. Cecil Houston and William J. Smyth say "the Orange Order was one of the foremost advocates of imperial sentiment in the country," whose intentions were to maintain Canada as a protestant nation, loyal to the British Crown. They had very little sympathy for the predominantly Catholic westerners. It has been further argued that the Orange Order had a significant influence in the operations of the country during the west's absorption into Canada. John A. Macdonald himself was an Orangemen. For further reference, see: Houston and Smyth, "The Orange Order and the Expansion of the Frontier in Ontario, 1830–1900"; Olsen, "The Orange Order, and Its Influence on the Canadian Government"; Morton, *The Shield of Achilles; Aspects of Canada in the Victorian Age*; Thompson, *Forging the Prairie West*.

<sup>5</sup> Thompson, *Forging the Prairie West*, 39.

<sup>6</sup> Miller, *Skyscrapers Hide the Heavens a History of Indian-White Relations in Canada*, 204.

established in 1870 by the passing of the *Manitoba Act*. McDougall was replaced by another Father of Confederation from the east, Adams George Archibald, as the Lieutenant Governor of the newly created province of Manitoba and the North West territory. Macdonald was unwilling to grant Riel amnesty, and so Riel escaped south to the United States to avoid being sent to the gallows. Though the *Manitoba Act* was based on the Bill of Rights drafted by the National Committee of the Métis of Red River, it did not succeed as widely as those in the region would have hoped. When the promises of the *Manitoba Act* were not met, many Métis moved further west, settling along the South Saskatchewan River where, unbeknownst to them, they would be challenged once more by Canadian expansionists some years later. The military force Macdonald had sent to subdue the Resistance stayed on the prairies, with plans to create a more permanent police force to maintain law and order in the North West.

## **B. Asserting control: On the road to the National Policy**

The development of the Canadian prairies was written into official government policy in 1878 with the introduction of Prime Minister John A. Macdonald's National Policy. It had been eleven years since confederation, and eight years since the Government of Canada bought what was known as Rupert's Land from the HBC. Macdonald had the task of creating one nation out of the vast expanse of land occupied by a variety of distinctly different cultures. As suggested by academics like J.F. Conway, Macdonald's Dominion Government was, at the very least, not well versed in the issues that faced the people occupying the prairies when the National Policy was implemented; and, at the very worst, entirely unsympathetic to their

situation within the Dominion of Canada and wilfully ignorant of it.<sup>7</sup>

### Historical Maps of Canada, 1867

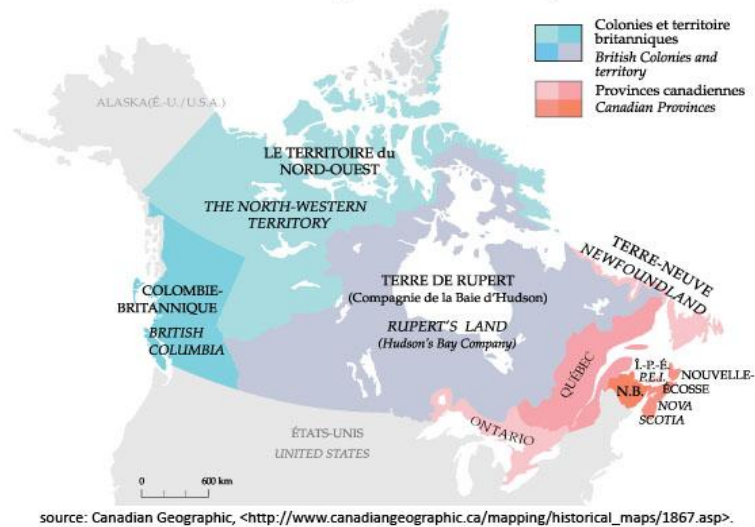


Figure 2.1

The National Policy represented Macdonald's core objective in acquiring the West which was, according to Stonechild, McLeod and Nestor, "the development of the western hinterland as a means through which to invigorate eastern Canadian industries."<sup>8</sup> Historian Donald Swainson, commenting on the central Canadian attitudes that informed the National Policy, says the West "was regarded as a huge extractive resource, designed to provide profit for the business man, land for the farmer, and power for Toronto."<sup>9</sup> Towards this end, the National Policy had three core components: set up a manufacturing hub in southern Ontario, build a national railway for the transport of goods, and settle the newly acquired West. What had happened in the run-up to the Canadian purchase of Rupert's Land in 1869 was something the central Canadian government was hoping to avoid going forward with the implementation of the National Policy.

<sup>7</sup> Conway, *The West*, 16–18.

<sup>8</sup> Stonechild, McLeod, and Nestor, *Survival of a People*, 125.

<sup>9</sup> Swainson, "Canada Annexes the West: Colonial Status Confirmed," 66.



The volume and content of legislation passed through the House of Commons after central Canada's purchase of Rupert's Land in 1870 substantiates the interest of the core in developing agricultural settlement in the West and maintaining a strict control of the land, the resources, and the people. After the resistance to Canadian takeover was mounted in 1869 and placated to some degree with the passing of the *Manitoba Act*, the *Act Respecting the Public Lands of the Dominion* was passed in 1872.<sup>10</sup> Better known as the *Dominions Lands Act*, the legislation sought to encourage immigration to the Prairie West, and defined the terms of what land belonged to whom. The arable land on the prairies was divided into townships, which were comprised of thirty six, one mile squared sections.<sup>11</sup> The even numbered sections were offered to settlers. The odd numbered sections belonged to the Canadian Pacific Railway (CPR), with the exception of sections 11 and 29 of each township, which were set aside for schools, and approximately another two sections of each township, which were gifted to the previous owner of Rupert's Land – the Hudson's Bay Company.<sup>12</sup>

The Act necessitated that the occupants show they had added value to their property, referring to building a dwelling and cultivating the land, within a certain period of time after taking ownership. The Act made it clear that the resources of the West were the rightful property of the Dominion. The settlers would live on and cultivate the land, but the resources extracted from the land belonged to the

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<sup>10</sup>This is not to diminish the feat accomplished by the provisional government in the north-west in succeeding to negotiate with the Government of Canada, but rather to draw attention to bankrupt promises made by the Government that resulted in many Manitobans retreating further inland to the banks of the South Saskatchewan.

<sup>11</sup>McKercher et al., *Understanding Western Canada's Dominion Land Survey System*, 5.

<sup>12</sup>Ibid., 10.

Dominion.<sup>13</sup> There was no regard in the original Act for First Nations and Métis land rights. There were amendments made in 1879 to include First Nations and Métis land rights after a lengthy process of treaty-making with Indigenous groups, though the amendments were said to be vague in their description and not actively followed up in practice.<sup>14</sup> One clear example of what it looked like for vaguely described guarantees to be not actively followed up will be used below in the discussing the challenges imposed on Indigenous groups attempting to make their way in newly settled, agrarian communities. The particulars of what land rights were supposed to guarantee continues to be the subject of negotiations between Indigenous groups and the federal government.

In 1873 came the establishment of the North West Mounted Police (NWMP), the permanent federal police force Macdonald had been planning to send west since 1870. Modelled on centralised police forces in other parts of the British Empire, most notably the Royal Irish Constabulary, the NWMP were a paramilitary organisation with the express purpose of claiming Canadian sovereignty over the North West territory and maintaining law and order. They later became known as the Royal Northwest Mounted Police, and have since been renamed the Royal Canadian Mounted Police (RCMP), as they are known today. They are the ‘mounties’ of Canadian popular culture. In 1875, the *North West Territories Act* was passed, which served to reiterate Ottawa’s authority over western lands expressed in the earlier *Act for the Temporary Government of Rupert’s Land and the North-Western Territory when United with Canada*. The earlier Act “provided for the appointment of a

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<sup>13</sup> Mooney, “Dominion Lands Act/Homestead Act.”

<sup>14</sup> Dickason and McNab, *Canada’s First Nations*, 265; Sprague, *Canada and the Métis, 1869-1885*, 161–162.

Lieutenant-Governor who was to administer the government under periodic instruction from Ottawa, and a Council to aid in administration of not less than seven or more than fifteen members appointed from Ottawa.”<sup>15</sup>

### Historical Maps of Canada, 1873



Figure 2.2

The 1875 Act added that the Ottawa appointed Lieutenant Governor reside in the capital of the North West Territories and “a provision which permitted the election of members to the territorial council as population increased” was added.<sup>16</sup> Then in 1876 all policies relating to Indigenous people were consolidated into the *Indian Act*, giving one office within the Government of Canada, the Department of the Interior, exclusive power over every aspect of Indigenous life. Finally, in 1878, the National Policy was established.<sup>17</sup>

All this legislation was introduced on the coat-tails of the *Manitoba Act*, which culminated in the National Policy, serving to warn the western inhabitants – Indigenous, non-Indigenous and Métis alike. The Dominion intended to spread

<sup>15</sup> Thomas, *The North-West Territories 1870-1905*, 4.

<sup>16</sup> Ibid., 5.

<sup>17</sup> Conway, *The West*, 20.

westward on its own terms and there was to be no expectation of negotiating the West's place in Confederation. The North West Territory, as Rupert's Land had been renamed upon absorption into Canada, was to be governed as a colony of central Canada, presided over by a federally appointed Lieutenant Governor. Within the legislation there was also a new frame of thinking about Indigenous people. It marked a dramatic change in attitude from the preceding period, defined by the lucrative fur trade, one in which, as Sylvia Van Kirk notes, there was a more symbiotic system of "mutual dependence between Indian and white."<sup>18</sup>

In the eyes of the central government, there was now an 'Indian problem' in the West; Indigenous groups had identified themselves as a troublesome and potentially explosive group in light of the 1869-70 Resistance.<sup>19</sup> The perspective imposed by the post-fur trade Dominion Government was that of legal guardian of Indigenous people, modifying government policy to reflect a protectionist and patronising agenda. Hugh Shewell notes that these policies and perspectives would be most harshly applied in the West where the Indigenous people were understood to be the least 'civilised' of any other in Canada, in part given their shorter history of contact with white settlers.<sup>20</sup> The process of treaty-making and settling Indigenous people onto reserve lands from which they were not permitted to roam was in full effect on the prairies in the 1870s.

As Prime Minister, Macdonald appointed himself Minister of the Interior, who was by extension the Minister responsible for overseeing the application of the newly consolidated *Indian Act*. The importance Macdonald put on the portfolio in

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<sup>18</sup> Van Kirk, *Many Tender Ties*, 9.

<sup>19</sup> Shewell, *Enough to Keep Them Alive*, 39.

<sup>20</sup> Ibid.

appointing himself to oversee the application of the *Indian Act* reveals the degree to which the Government thought it necessary to maintain control over Indigenous people.<sup>21</sup> Some academics, such as Joyce Green, have suggested that subduing and settling the Indigenous populations on the prairies through treaty-making was the fourth and unnamed component of Macdonald's National Policy.<sup>22</sup> Without Indigenous people being neatly organised out of the government's way on small plots of land dotting the prairies, the other goals of mass settlement and agricultural development would be that much more difficult to accomplish.

### **C. Fulfilling its purpose: Agriculture, racial segregation and hard times in the 1880s**

While they had been a vital part of maintaining the fur trade, Indigenous people would soon find themselves excluded from the next venture in profitmaking to rule the region. In considering their role in agriculture, Macdonald said to the House of Commons that Indigenous people "have not the ox-like quality of the Anglo-Saxon; they will not put their neck to the yoke."<sup>23</sup> From phrenology to the "evolutionary stage paradigm," there was a proliferation of what has been called scientific racism in the late nineteenth century.<sup>24</sup> While not entirely a new idea, the perspective gained added fervour at this juncture in Canada, providing convenient justification for the paternalistic control of the North West Territory. There was also significant anxiety within the British Empire at large about "imperial degeneration" as a result of social

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<sup>21</sup> Ibid., 40.

<sup>22</sup> Qtd. in ibid., 13.

<sup>23</sup> Carter, "'We Must Farm to Enable Us to Live': The Plains Cree and Agriculture to 1900," 330.

<sup>24</sup> Haig-Brown and Nock, "Introduction," 17.

and racial impurity in the colonial world.<sup>25</sup> The social purity movements of the 1880s had their roots in seeking the abolishment of prostitution and child sex abuse but evolved into a more general movement concerned with the piety of Anglo-Saxon women in particular, and sexual self-restraint.<sup>26</sup> These movements contributed to the discourse of imperial degeneration in the colonies through fixating on the importance of “clean souls and bodies” which were, by definition, white.<sup>27</sup> The Métis were a prime example of the “perils of racial mixing.”<sup>28</sup> There was no example more stirring than that of Marie-Anne Gaboury Lagimodière, the grandmother of Louis Riel himself. She was “often celebrated as the ‘first White woman’ in the West,” Sarah Carter informs us, and in just a couple generations her mixed blood grandson was the personification of western barbarity.<sup>29</sup>

It was the social construction of ‘the Indian’ that prevented Indigenous people from flourishing throughout this period, as opposed to their incapacity and unwillingness to modify their way of life to one of settled, agricultural development consistent with the Canadian vision of the West’s purpose. While treaty negotiations were going on throughout the 1870s, the leaders of a number of Indigenous communities made it clear that they wanted provisions for agricultural subsistence written into the treaties. They were perfectly aware that they would have to modify their way of life to survive as settled communities in this new, now Canadian, society. Sarah Carter notes that “as early as the 1850s European travellers to the Plains reported that the Cree were anxious to try agriculture and wanted assistance in

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<sup>25</sup> Carter, “The ‘Cordial Advocate’: Amelia Paget and The People of the Plains,” 212.

<sup>26</sup> For a broader conversation on the purity movements, see: Jeffreys, *The Spinster and Her Enemies*.

<sup>27</sup> Valverde, *The Age of Light, Soap, and Water Moral Reform in English Canada, 1885-1925*, 104; See also: Jeffreys, *The Spinster and Her Enemies*, 6.

<sup>28</sup> Carter, “The ‘Cordial Advocate’: Amelia Paget and The People of the Plains,” 212.

<sup>29</sup> Ibid.

the way of instruction and technology.”<sup>30</sup>

The government did agree in vague language that they would provide equipment and agricultural training as part of the treaties. However, there were a variety of problems with the implementation of this assistance. In many cases the reserve land set aside for Indigenous people was not appropriate for agricultural development and, if it was, the livestock and machinery supplied were woefully inadequate.<sup>31</sup> There were also complications with the interpretation of the policy that resulted in certain groups being unable to start agricultural development. Indigenous people had to settle the land officially before they would be given implements, cattle and seed, and they could not be considered officially settled until the land was surveyed, which in some cases took years. Once they had settled, they then had to be actively cultivating before what was promised could be distributed, due to concerns that it may encourage idleness, despite the fact that they would require the implements to cultivate in order *to* cultivate.

To further complicate matters, the 1880s were difficult for everyone engaged in agricultural work due to environmental and economic factors such as the collapse of the Winnipeg land booms in 1883.<sup>32</sup> Feeling somewhat abandoned by the government, the white settlers, Métis and First Nations people formed a Settlers' Union in 1884 to challenge the treatment they had received from the federal government during their short time as members of the Dominion of Canada. At a meeting in the town of Batoche along the South Saskatchewan River, the Settlers' Union agreed to call upon Riel to return to the Territory from his place of hiding in

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<sup>30</sup> Carter, *Aboriginal People and Colonizers of Western Canada to 1900*, 100.

<sup>31</sup> Carter, “‘We Must Farm to Enable Us to Live’: The Plains Cree and Agriculture to 1900,” 326.

<sup>32</sup> O'wram, *Promise of Eden the Canadian Expansionist Movement and the Idea of the West, 1856-1900*, 171.

the United States. By December of 1884 the Union had prepared a Bill of Rights to be sent to Ottawa. John Conway, who provides one of the very few substantive conversations about the Settlers' Union in the run-up to the 1885 Rebellion, offers the following:

The demands were not unreasonable and had been made many times before: better treatment for the Indians; land settlement for the Métis; provincial status; representation in the federal Parliament; control of land and natural resources; changes in the homestead law and regulations; vote by secret ballot; tariff reductions; a railway to Hudson Bay.<sup>33</sup>

The Bill of Rights posed a direct challenge to Macdonald's imaginings about the purpose and function of the West as a resource base to be governed and controlled from the centre. Conway writes that Macdonald ignored the Bill of Rights sent by the Settlers' Union, claiming he never saw it.<sup>34</sup> Others, such as Macdonald's biographer Donald Creighton, suggest he saw the Bill of Rights, discussed it in Cabinet on 6 January 1885 and forwarded it on to Sir David Lewis Macpherson who had recently succeeded him as Minister of the Interior.<sup>35</sup> The government was, according to Creighton, dealing with the situation and the resulting violence was caused by puerile impatience and a simple misunderstanding about whether or not the Government was taking the western demands seriously.

Regardless, there was no invitation for western delegates to be sent to Ottawa to negotiate as had been requested in the Bill of Rights, and without the option of negotiation, stirrings of a confrontation with the government began to build in the West. It is generally understood that many were alarmed by this in the region

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<sup>33</sup> Conway, *The West*, 40.

<sup>34</sup> *Ibid.*, 41.

<sup>35</sup> Creighton, *John A. Macdonald*, 412 This biography was first published in two volumes: John A. Macdonald: the Young Lion and John A. Macdonald: the Old Chieftain. The above quotations are taken from a 1998 reprinting of a one volume combination of Creighton's 1950 two part biography.



as no one was seeking to repeat the violence of 1869-1870. Conway and Flanagan report that many supporters to the Bill of Rights stepped back as a result.<sup>36</sup> Those remaining were mostly French-speaking Métis, a handful of white settlers, and a few First Nations allies.<sup>37</sup> Military action did ensue in 1885, and the Government of Canada succeeded in suppressing the Rebellion.<sup>38</sup> Riel was hanged in Regina alongside eight prominent First Nations leaders, while many others were imprisoned. Some managed to escape to the south and others to the far north.<sup>39</sup> Conway says this abrupt end to the collective action of the western territory was intended to reiterate a clear message to those occupying the North West Territory: “the Dominion government would not tolerate opposition to its plan for the West. Central Canada’s vision, especially Ontario’s, of the opening of the West would remain Canada’s.”<sup>40</sup>

#### **D. The legacy of 1885**

Cross-racial and cultural political alliances were fractured post-Rebellion, and animosity began to build between the different groups in the area. The white settlers were commonly of the opinion that Indigenous people had an unfair advantage, given the assistance the government was required to provide through the treaties.<sup>41</sup> As discussed in the previous sections, there was in reality a significant gap between vague promises made on paper to Indigenous people and the implementation of the assistance necessary for Indigenous people to succeed in this new, agricultural west. There was as well an ingrained, institutional belief that Indigenous people were

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<sup>36</sup> Conway, *The West*, 41; Flanagan, *Riel and the Rebellion 1885 Reconsidered*, 8.

<sup>37</sup> Conway, *The West*, 42.

<sup>38</sup> Foster, “The Plains Métis,” 311.

<sup>39</sup> Conway, *The West*, 43.

<sup>40</sup> Ibid.

<sup>41</sup> Carter, “‘We Must Farm to Enable Us to Live’: The Plains Cree and Agriculture to 1900,” 330.

racially inadequate to perform, as Macdonald put it, the rugged “ox-like” work required of those who would break the land. Increasing numbers of white settlers came west in the late nineteenth and early twentieth century. Their previous sense of solidarity with the Métis and First Nations groups disintegrated in no small part as a result of imposed segregation between Indigenous and settler communities that came with the treaty agreements.

The defeat in 1885 was especially costly for the Métis whose challenges as a people would see them come to be called the ‘Road Allowance People’. Neither First Nations people who were subject to treaty rights and organised out of the way of settlement onto reserve lands, nor white enough to live freely in growing settler communities, the Métis existed in jurisdictional limbo. They were not treated as a collective in the same way as groups of First Nations people, with whom they signed treaties in recognition of a collective identity. Métis families were offered what was called ‘land scrip’ or ‘money scrip’ via a convoluted and daunting bureaucratic process by which they agreed to extinguish their claim to Indigenous identity in exchange for a small amount of land or modest monetary compensation.<sup>42</sup> Like many settlers at the time, those who received land scrip struggled to prove up their land, a situation worsened by those lacking any background in agricultural development. Those who took money scrip had few options. The *Dominions Land Act* from 1872 had meticulously allocated a purpose to every square inch of land and in the vast expanse that was the West there was no place for the Métis, as they were neither full-blood ‘Indians’ of the *Indian Act* or full-blood whites with the

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<sup>42</sup> Hatt, “The North West Scrip Commissions as Federal Policy: Some Initial Findings,” 118; See also: Augustus, “The Scrip Solution: The North West Métis Scrip Policy, 1885-1887”; Ray and Tough, *Bounty and Benevolence a History of Saskatchewan Treaties*.

accompanying settlement rights. Road allowances had been built into the calculations of the *Dominions Land Act* as lines that divided one township from another, so as not to reduce the size of the sections of agricultural land given to settlers. A section of land was exactly one mile squared, with no intrusions of the infrastructure needed to move the harvest produced from the land.

In her famous 1973 memoir *Halfbreed*, Elder Maria Campbell tells how “the Halfbreeds then became squatters on their land and were eventually run off by the new owners.”<sup>43</sup> The new owners were settlers who had arrived with the government’s blessing to make the land productive for the Dominion. Not all road allowances had roads built on them and “one by one,” Campbell says, “they [the Métis] drifted back to the road lines and crown lands where they built cabins and barns and from then on were known as ‘Road Allowance People’. So began a miserable life of poverty which held no hope for the future.”<sup>44</sup>

As Indigenous people struggled with inadequate government supplies, their failings in agriculture were chalked up to derisory workmanship, apathy due to government-encouraged idleness and a natural inability to adapt to a more civilised existence. While on the books the government had no right to remove Indigenous entitlement to the land once a treaty had been signed or once scrip had been given, the seeming inability of Indigenous people to ‘use’ the land properly served to justify the underhanded sale of First Nations and Métis lands to white settlers.<sup>45</sup> In spite of the odds, some Indigenous people were successful in agricultural development, but even then they were still viewed with animosity during the hard economic times of

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<sup>43</sup> Campbell, *Halfbreed*., 13.

<sup>44</sup> Ibid.

<sup>45</sup> Miller, *Skyscrapers Hide the Heavens a History of Indian-White Relations in Canada*, 274.

the 1880s. Their success was, after all, viewed as subsidised and thus it was seen as entirely unfair for them to compete in the same market as those whose work was not subsidised.<sup>46</sup> The government responded to these successful Indigenous farmers by attempting to subdivide individual lots on reserve lands to discourage large-scale farming, basically crippling their ability to compete in the market. Indigenous people resisted, so the government instead suggested they ought to get used to farming without “labour-saving machinery” because eventually they would be on their own without such government provided conveniences anyhow.<sup>47</sup>

The paramilitary force Macdonald had established years earlier as the North West Mounted Police, renamed the Royal Canadian Mounted Police (RCMP) in 1920, were conveniently on hand to enforce such removals and protect the settlers who took over dispossessed Indigenous lands. Maria Campbell tells of the encounter her great grandmother had with the RCMP when, as an elderly woman and the niece of Riel’s famed 1885 military leader Gabriel Dumont, she was told the land on which her cabin was built had been designated for Prince Albert National Park.

Years later when the area was designated for the Park, the government asked her to leave. She refused, and when all peaceful methods failed the RCMP were sent. She locked her door, loaded her rifle, and when they arrived she fired shots over their heads, threatening to hit them if they came any closer.<sup>48</sup>

As can be gleaned from Campbell’s recounting of her great grandmother’s experience, it was not without resistance that Indigenous people, First Nations and Métis alike, left their homes to make way for white settlement. Curiously written in French, the RCMP’s motto was, and is, “maintiens le droit” translated as “defending

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<sup>46</sup> Carter, “‘We Must Farm to Enable Us to Live’: The Plains Cree and Agriculture to 1900,” 330.

<sup>47</sup> Miller, *Skyscrapers Hide the Heavens a History of Indian-White Relations in Canada*, 271.

<sup>48</sup> Campbell, *Halfbreed.*, 15.

the law.”<sup>49</sup> The RCMP did the bidding of the federal government in the West. Their major contribution to the development of the region was in policing strict boundaries between Indigenous and settler populations for the purpose of defending the laws made in the interests of establishing the West as an extractive agricultural base for central Canadian consumption. To this end, they protected the newly arrived settlers from the Indigenous people who, like Maria Campbell’s great grandmother, might put up a fight.

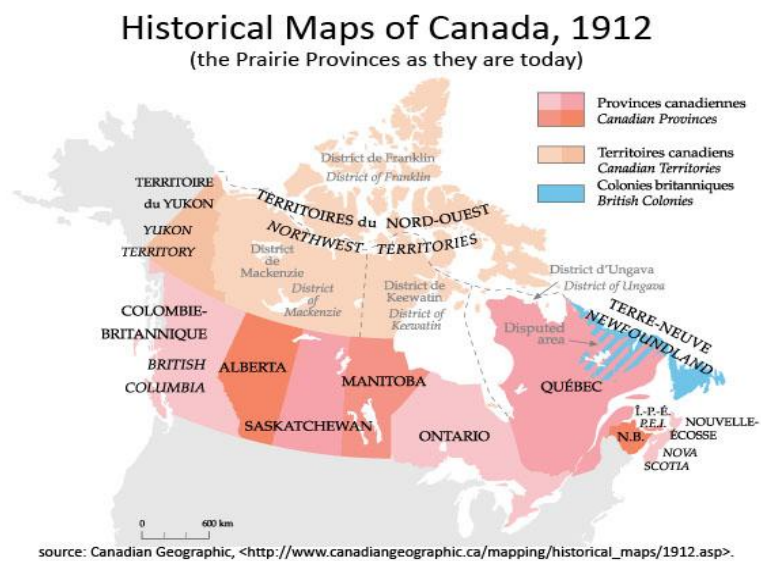


Figure 2.3

In the years after 1885, white settlers came together to request many of the same things of the federal government that had been fought for in 1869-1870 and 1885, including provincial status, increased self-determination, and rights to land and resources. In 1905, Saskatchewan and Alberta were given provincial status. In 1912, Manitoba’s borders were expanded to what they are today, as shown in figure 3. These three Prairie Provinces, as they came to be known, which had been subject to the *Dominions Land Act*, would not have land and resource rights equal to that of the

<sup>49</sup> Government of Canada, “Badges and Insignia.”

other provinces of Canada until 1930. The legacy of 1885 was the successful fracturing of a collective Indigenous/settler alliance that forcefully subjugated one for the benefit of the other. It is a historical trauma from which the West, and the Canadian nation, has yet to recover. The following section explores how these events have been rationalised in nation-building narratives that seek to unify the country around Canadian victory in 1885.

## **E. The West in Canadian nation-building narratives**

The 1869-1870 Resistance and the Rebellion that followed fifteen years later are classically portrayed as Métis insurrections due to the political conviction of Louis Riel. The conflict is often referred to as the “Riel Rebellions” as a reflection of the belief that Riel’s individual ego was at the centre of the conflict. In George Stanley’s *The Birth of Western Canada*, he describes the Métis, which he calls ‘half-breeds’ as was common at the time, as first and foremost “a primitive people,” who, “were bound to give way before the march of a more progressive people.”<sup>50</sup> Stanley does not differentiate between Métis and First Nations groups in the West at the time, clarifying that:

there was little difference between the half-breed and the Indian question. Both were aspects of the same general problem. By character and upbringing the half-breeds, no less than the Indians, were unfitted to compete with the whites in the competitive individualism of white civilisation, or to share with them the duties and responsibilities of citizenship.<sup>51</sup>

Stanley saw the 1869-1870 Resistance and the later 1885 Rebellion as the result of resentment that grew from “the gradual realization of their [Métis and First Nation’s]

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<sup>50</sup> Stanley, *The Birth of Western Canada*, 49.

<sup>51</sup> Ibid., vii.

inability to adjust themselves to the new order.”<sup>52</sup>

To the central Canadian government, the ‘Indians’ and the ‘half-breeds’ were one in the same in the obstacle they posed to Canadian expansion. That there were also some white settlers there as well is largely ignored in favour of an uncomplicated narrative that smoothly carves the West out as a frontier in obvious need of assistance in the process of becoming civilised. Stanley identifies “that the significance of those troubles which marked the early history of Western Canada is to be found....in their connexion with the general history of the frontier.” He further argues that “both the Manitoba insurrection [a.k.a the 1869-1870 Resistance] and the Saskatchewan rebellion [a.k.a. the 1885 Rebellion] were the manifestation in Western Canada of the problem of the frontier, namely the clash between primitive and civilised peoples.”<sup>53</sup> There is pity in Stanley’s tone when he says that to the uncivilised western peoples, civilisation was a threat that meant “demoralization, decline and ultimate extinction.”<sup>54</sup> Stanley sees that the West was something to be overcome and tamed in order for the Canadian project to succeed. He also sees the potential for disunity in the conceiving of the West in Canadian history, closing with the anxious warning that “a nation divided against itself cannot stand. Only in the realisation of national unity can the ideal of the Fathers of Confederation survive.”<sup>55</sup> The conquering of the West is rallying point for Stanley; a hook on which national unity can be hung.

Later historians expand on the concept of the frontier articulated by Stanley in 1936, seeking to differentiate the Canadian West from the American West.

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<sup>52</sup> Ibid., 49.

<sup>53</sup> Ibid., vii.

<sup>54</sup> Ibid., vii–viii.

<sup>55</sup> Ibid., 407.

Harold Innis popularized the Staples Thesis as a uniquely Canadian version of Turner's better known American Frontier Thesis. While Turner's thesis focused on the "concept of an America free of European influence," Innis' thesis focused on precisely the opposite, stressing the uniqueness of Canada's continued ties to its European roots.<sup>56</sup> Innis theorized that the Canadian political economy depended on the sale of staples such as furs and timber, which inextricably linked the hinterland of Canada to the large metropolises of Toronto, Montreal, and London.<sup>57</sup> Creighton elaborated on this foundation and pioneered the Laurentian Thesis, which focused on the importance of the St. Lawrence Seaway in analysing the connection between the metropolises of the east and the hinterland of the west. Such theorizing maintained the kind of 'nation-building' history present in Stanley's work by conceiving of Canada "as a distinct and organically logical country in its own right," whose boundaries were determined by no less than the physical geography of North America's landscape.<sup>58</sup> Such notions of nature determining the role of the regions in the overarching national identity was heavily critiqued by both northern and western scholars in later years, who have suggested such a perspective is fundamentally "anti-regional" – the North and West are, in this articulation of Canada, only spoken about as places "subject to the interests of the core."<sup>59</sup> In their constructions as 'hinterlands' there is also an induced furtherance of setting up a distinction between a civilised core and an uncivilised wilderness. The civilised merchants in the core await the products supplied by those daring enough to brave these less civilised

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<sup>56</sup> Neufeld, "The Commemoration of Northern Aboriginal People by the Canadian Government," 23.

<sup>57</sup> It should be noted that the original author of the Staples Thesis is understood to be W.A. Mackenzie, but it was Innis who popularized the Thesis and presented it as a unique Canadian alternative to the Frontier Thesis.

<sup>58</sup> Neufeld, "The Commemoration of Northern Aboriginal People by the Canadian Government," 23.

<sup>59</sup> Ibid., 24.



regions. These less civilised regions are to be controlled by the core as much as possible in order to maintain the stability of a nation.

According to Donald Sprague, William Lewis Morton was initially “disturbed” by the construction of primitivism forwarded by Stanley and was among the first intellectual and cultural historians to present the notion of a uniquely western Canadian identity not dependent on its status as a frontier.<sup>60</sup> Morton forwarded the notion “that the prairie West was not an intellectual and cultural backwater, isolated from the cultural roots of western civilisation” as represented by the West as the frontier to central Canadian civilisation.<sup>61</sup> Morton instead suggested that western Canadian identity represented a perfect combination of British, western European, central Canadian and American intellectual and cultural values that had been “transplanted with singularly little loss” on the prairies, which he called “a great heritage.”<sup>62</sup> Born on the prairies himself, Morton was committed to the uniqueness and civility of western Canadian identity.<sup>63</sup> The West is not a frontier to Morton in the same way it was for Stanley, but it is the hinterland with deep ties to sophisticated, far away metropolises. He saw that there was an “initial bias” in prairie politics rooted in “the fact of political subordination in Confederation” but he did not pose any significant challenge to unifying Canadian histories coming out of central Canada.<sup>64</sup> Morton celebrates that “despite the lateness of settlement and the barrier of distance, the institutions and people of the prairie West were, or became,

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<sup>60</sup> Francis, “In Search of a Prairie Myth: A Survey of the Intellectual and Cultural Historiography of Prairie Canada,” 23.

<sup>61</sup> Ibid.

<sup>62</sup> Qtd. in Berger, *The Writing of Canadian History*, 243; Francis, “In Search of a Prairie Myth: A Survey of the Intellectual and Cultural Historiography of Prairie Canada,” 23.

<sup>63</sup> Dickin, “Roughing It in the West, Or, Whose Frontier, Whose History?,” 103.

<sup>64</sup> Morton, “The Bias of Prairie Politics,” 13.

Canadian.”<sup>65</sup> Pre-empting the slogan of a well-known western Canadian political party that took shape decades later, Morton’s mode of engaging unifying narratives that positioned central Canada as the heart of Canadian identity was a plea that ‘the West wants in’.<sup>66</sup> Of Morton, Janice Dickin says he:

...was not willing to accept eternal second-rate status for his region, but he did see as its proper ambition that of rising to the major leagues, the game going on at the centre. His dedication was to doing the sort of work that would help this happen.<sup>67</sup>

In order to avoid challenging the unifying national narrative, Morton rationalises central actions in making the West Canadian by stating “the subordination was, of course, in the nature of things, the outcome of the fact that the west was an almost wholly unpeopled wilderness in 1869.”<sup>68</sup> While he resists Stanley’s racially charged rationalisation of the West as a primitive place, he replaces it with the justification of *terra nullius*. J.R. Miller makes light of the racism inherent in Morton’s account by saying the heavy handed manner by which the West was brought into Canada was “partly attributable to a belief that there was no one in the region to consult; Indians and people of mixed Indian and European ancestry simply did not figure in any political equation that Victorian politicians and bureaucrats attempted to solve.”<sup>69</sup> Morton credits the Métis as the only “distinctly western group of people,” by which he means a people whose laws and institutions were not copied from Ontario.<sup>70</sup> This statement is racially charged as well in that Morton does not acknowledge the First Nations as a distinct western group of people before the Métis. Indeed, they do not

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<sup>65</sup> W.L. Morton, “The Bias of Prairie Politics,” 13.

<sup>66</sup> Slogan of the Reform Party of Canada, a populist party started in Alberta.

<sup>67</sup> Dickin, “Roughing It in the West, Or, Whose Frontier, Whose History?,” 103.

<sup>68</sup> Morton, “The Bias of Prairie Politics,” 13.

<sup>69</sup> Miller, *Skyscrapers Hide the Heavens a History of Indian-White Relations in Canada*, 200.

<sup>70</sup> Morton, “The Bias of Prairie Politics,” 12.

factor for him as ‘a people’. While he also credits the challenge the Métis posed to Canada as “sufficient to set a tradition at work, the tradition of western grievance,” he qualifies that “the resistance of the Métis was in many ways pathetic and even comic.”<sup>71</sup> The manner in which central Canada absorbed the west, he says, was “proper and adequate.”<sup>72</sup> He identifies “the bias of prairie politics” that would see decades of resistance to central Canadian control as originating from what he characterises as the natural subordination of the West in confederation, emanating from the fact that there were very few people there.<sup>73</sup> The bias, he says, was not inevitable but rather historical: it was the product of human will and certain personalities (by which Morton means Louis Riel), and also the result of “one serious omission” which was that no one went to explain to the few western inhabitants that their land had been sold to Canada.<sup>74</sup> That omission, however, “was an imperial rather than a Canadian responsibility.”<sup>75</sup>

Stanley and Morton are both forgiving in their portrayals of the Canadian government in the late nineteenth century, and both forward a version of events in which the violence that took place was unfortunate, but either inevitable and necessary or perfectly justifiable.<sup>76</sup> The inevitability and necessity come from the land being populated by uncivilised people who would be forced to come into civilisation even without the direction of central Canada given the march of time, or otherwise justified on the grounds of there being very few people in the West to begin with. The conflict was naturalised as an unfortunate by-product of the frontier

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<sup>71</sup> Ibid., 13.

<sup>72</sup> Ibid., 14.

<sup>73</sup> Ibid., 12.

<sup>74</sup> Ibid., 12 and 14.

<sup>75</sup> Ibid., 14.

<sup>76</sup> Morton, *Manitoba, a History*, 143; Stanley, *The Birth of Western Canada*, 407.

meeting civilisation by Stanley; on the other hand, the conflict was dressed up slightly differently by Morton, the result of a small group of people with a larger-than-life leader in the hinterland who had a miscommunication with the metropolis due to a serious imperial, not Canadian, omission.

Moving back to the work of Creighton, among his most notable contributions to Canadian history is that of an award winning biography of Sir John A. Macdonald published in 1950. Creighton was a political historian who did not intend to write a history of the West necessarily, but the taming of the West became a main theme in his two volume biography. Creighton exemplifies what Morton's gentle prodding about *certain personalities* in the West during confederation was hinting at. As Macdonald's biographer, Creighton was unapologetically partisan with respect to the government's position. Creighton pegged one leader against the other, framing the events of 1885 as a battle of ego and righteousness between Macdonald as the nation-builder and Louis Riel as the treasonous western rebel. Between 1870 and 1885, Macdonald had been busy building a nation through realising the National Policy. In Creighton's account, Macdonald thought he had dealt and done away with the nuisances out west in 1870 when suddenly the incoming news from Saskatchewan sounded awfully grim. "What was happening?" Creighton muses:

Had the unbelievable really occurred? Had Riel determined to pull down the heavens because his own private demands for money were ignored? Was this the real explanation of the curious ineffectuality of the government's promise to proceed with an equitable settlement of the *métis* claims for land and scrip? Macdonald did not know, and the time for answering such questions had gone by. He must act.<sup>77</sup>

The 'action' taken was to rouse the Canadian militia, under the command of Sir

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<sup>77</sup> Creighton, *John A. Macdonald*, 416–417.

Frederick George Middleton. So the second armed conflict in western Canadian history began fifteen short years after the first.

The voices of Stanley, Morton and Creighton all set up a distinction between the centre and the periphery, and this acquisition of the periphery was a key moment in Canada's nation-building story. They identify controlling the West as a challenge to be overcome and something around which they believe Canadians can unify. They are not full of vitriol for the inhabitants of the West before mass white settlement, but rather pity the few souls left struggling to adapt who act out both from a place of fear for the future and self-centred conviction. As a national story, the absorption of the West involves some aspects that are unfortunate, but there are no real victims and no real perpetrators. These are the original tales of white innocence in Canada.

## **F. Regional histories as a challenge to nationhood**

Challenges to these nation-building histories with a consciousness-raising ethos began to develop in the 1960s and 1970s. Howard Adams, a Saskatchewan born Métis man educated at the University of California, Berkeley, published *Prison of Grass* to sensational reviews in 1975. Adams refutes the focus on Louis Riel as the prime agitator in 1869-1870 and 1885, emphasizing instead the presence of a democratically elected local government, and the commonality of grievances between the First Nations, Métis and settler populations. In the below excerpt he writes about the circumstances of 1885:

Under these circumstances it was not possible for Riel or anyone else to come to Batoche and take over individual control of the people and their government. The decision

to invite Riel to Saskatchewan was taken after the matter had been discussed by people in several districts, both Native and white. The invitation specified what Riel would have to do and his main function was to aid the people of the North West in their constitutional struggle. He was responsible to the people and therefore took direction from them.<sup>78</sup>

Adams' publication has been compared to the works of 'black-power' advocates in the United States as a result of his combative tone towards white supremacy. With the 1989 re-release of *Prison of Grass* one reviewer offered that Adams' account was not a call:

...for reforms because of the evident failure of federal Indian policy. It was more like Pierre Vallières in FLQ [Front de Libération du Québec] incarnation, an insightful attack against pervasive 'Uncle Tomahawk-ism' and a programme to build red nationalist consciousness, an intensely angry polemic against the established order of oppression and an impassioned plea for nothing short of revolutionary change.<sup>79</sup>

The undercurrent of Adams' work stresses the agency of the West and the imposition of the East.

Douglas Owsam added to this discourse on the western uprisings in his 1980 publication *Promise of Eden: the Canadian Expansionist Movement and the Idea of the West, 1856-1900*. Owsam expands upon Adams' notion of a sense of unity of western Canadian identity at this critical juncture in history. He speaks to the histories of Stanley, Morton and Creighton, countering that in his history "the 1885 Rebellion has been interpreted as another, and final, attempt of the old order to halt

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<sup>78</sup> Adams, *Prison of Grass*, 80.

<sup>79</sup> Richling, "Book Review of 'Prison of Grass' by Howard Adams," 148; Pierre Vallières was an intellectual leader within the FLQ, a group of Québec nationalists responsible for multiple acts of violence which culminated in the kidnapping of British Trade Commissioner James Cross, and the murder of Québec Labour Minister Pierre Laporte during what is known as the October Crisis in 1970. For further details, see: Fournier, *FLQ*.

the march of a foreign civilisation.”<sup>80</sup> It is not ‘civilisation’, broadly defined, that the West was resisting in Owram’s interpretation, but instead the imposition of a foreign, eastern Canadian civilisation. Owram goes on to state that Métis “discontent represented to some extent the discontent of the West in the face of eastern domination and eastern indifference,” noting that “by 1885 westerners were beginning to view their own region as distinct from the East.”<sup>81</sup>

The work of sociologist John F. Conway, as well, represents a re-telling of western Canadian history that connects these early calls for recognition and autonomy to a later, unique brand of prairie populism that saw the rise of the conservative Social Credit Party in Alberta, the social democratic Collective Commonwealth Federation in Saskatchewan (the precursor to the federal New Democratic Party), and the federal Reform Party. Conway’s re-telling is among the few histories that make significant light of the Settlers’ Union in reference to the agitation coming up to 1885. He says,

Increasingly, the white settlers and the Métis recognised that they shared similar concerns and that united action might succeed where separate pressure had failed. Thus a new movement, uniting Métis – French and English – and white settlers, emerged, largely led by the Settlers’ Union. On February 25, 1884 a full platform was adopted encompassing all popular grievances in the Territory, including those of the Indians, who, as a result of a policy of deliberate neglect, faced starvation in the midst of appalling living conditions.<sup>82</sup>

As was stated in earlier sections of this chapter pertaining to 1885, Riel and eight First Nations men were hanged. Riel’s military chief, Gabriel Dumont, fled to the

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<sup>80</sup> Owram, *Promise of Eden the Canadian Expansionist Movement and the Idea of the West, 1856-1900*, 176.

<sup>81</sup> Ibid., 177–178.

<sup>82</sup> Conway, *The West*, 40.

south and joined Buffalo Bill's Wild West in touring the United States. Others scattered to the north. The prominent white Settlers' Union leaders who were apprehended were acquitted. Louis Riel's personal secretary, William Henry Jackson, was among them. He was committed to an insane asylum, from which he escaped and fled to Chicago where he became a well-known champion of the working class.<sup>83</sup> He died in New York City a month after being evicted from his basement apartment at the age of ninety in 1951 on grounds that the mass of documents he had in his small apartment constituted a fire hazard. He was the subject of a human interest piece in the New York Dailies that featured a photograph of a frail William Jackson sitting amongst his documents, which he called his 'library' on the street. The article says Jackson had dreams of building a library for the Indians in Saskatchewan "so that they'd get a better deal in this generation than they had in the past," and mentioned his self-proclaimed involvement in the "Riel Rebellion."<sup>84</sup> There was little context for William Jackson, Indians in Saskatchewan or the Riel Rebellion in New York City, and Jackson's "library" was destroyed.

There is little written about the Settlers' Union. The significance of what the Settlers' Union represented was lost in the grand historical narratives about Canadian expansion that depend on western agitation being the product of outlying opinions and a lack of civility. To challenge the government's authority throughout the nation-building period of the latter nineteenth century would be to challenge the very foundation of Canada as a nation. Western Canadian academic work such as that of Howard Adams, Douglas Owsam and John Conway highlight how holding one person, Louis Riel, and one people, the Métis, responsible for western agitation

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<sup>83</sup> Smith, *Honoré Jaxon*, 199.

<sup>84</sup> *Ibid.*, iv.



at this juncture in history allows the mythology of Canada's foundation as a just, natural, and inevitable state, to remain uncomplicated in the popular imagination.

There is by no means consensus, academic or otherwise, on what the Resistance and the Rebellion meant to Canada and to the West. Some of the most well-known contemporary advocates for western Canadian interests do not connect what happened before en masse white settlement with the grievances brought to the federal government from the West after en masse settlement. In fact, there is a distinct line drawn in the sand between the pre-1885 West, and the post-1885 West, with some of those most outspoken political leaders fighting for western regional identity being among the least sympathetic to Indigenous grievances.<sup>85</sup>

George Melnyk points to this oddity in the history of western protest in that those involved in the second phase of resistance to the federal government with the advent of agricultural development do not see themselves connected to the preceding phase. The result is that "today's farmers are not interested in supporting Aboriginal claims," nor were they at the time of burgeoning agrarian protest in the early twentieth century.<sup>86</sup> Roger Gibbins, President and CEO of the Canada West Foundation and former political science professor at the University of Calgary, says in his 2003 publication *Western Visions, Western Futures* that "the most salient backdrop for an understanding of the historic roots of western alienation comes from the agrarian community on the Prairies during the first three decades of the twentieth century."<sup>87</sup> The happenings in the region before the twentieth century - before the

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<sup>85</sup> One such example comes in the form of the previously mentioned Reform Party of Canada, a socially conservative populist party with roots in Alberta. Part of their platform was limiting Aboriginal land rights and doing away with the federal Department of Indian Affairs.

<sup>86</sup> Melnyk, "Introduction," 5.

<sup>87</sup> Gibbins, Berdahl, and Gibbins, *Western Visions, Western Futures*, 29; The Canada West Foundation examines "public policy issues of particular interest to western Canadians, to test national policies

raison d'être was the assigned task of agricultural development as service to the country - simply do not factor into conversations about contemporary conceptions of western alienation. A high population of Indigenous people on the prairies represents a "unique demographic reality" as compared to the rest of the country, according to Gibbins, but the narratives of colonialism and narratives of alienation exist in two different spheres.

This should not be altogether surprising when the national story of how the West 'became' Canadian is a story of the land being hard won through dutiful and benevolent persistence: coaching Indians in civilisation and clearing the land for the agricultural development needed for the nation to thrive. Worst of all, were it not for the Dominion of Canada's gentle taming of the Wild West, the West might have been American.<sup>88</sup> The only knowledge the incoming settlers had of the region was the knowledge that the land had been won by Canada, which was now giving them the opportunity to recreate the Eden alluded to in O'ram's suggestive 1980 title. The narrative that made the vast majority of westerners Canadian - the narrative that defined their reason for being and value to the nation - is wrapped up in the same narrative that required that they disassociate and fear the potential uprising and independence of their Indigenous neighbours.

## **G. Remembering Riel and national anxiety**

This is no more evident than in the continued anxiety and fervour that surrounds the memory of Louis Riel and the legacy of the Resistance and the Rebellion. Tom

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against regional aspirations and to ensure an effective regional voice in national policy discussions and the national political process." See: The Canada West Foundation, "About Us."

<sup>88</sup> Another common theme not explored in the body of the text is the justification of expansion on the basis of anxiety about American takeover.

Flanagan, a political science professor at the University of Calgary and also a well-known public figure from his work with the Reform Party and the presently governing Conservative Party, has done extensive research on the figure of Louis Riel. He wrote in a 1983 publication entitled *Riel and the Rebellion: 1885 Reconsidered* that he was writing the book around the centennial of the Rebellion in large part “because of the gathering movement to grant Riel a posthumous pardon,” which struck him as “quite wrong.”<sup>89</sup> Flanagan represents the other side of the interpretations written by Adams, Owsen and Conway around the same period. Flanagan’s take would be much more reflective of the public discourse happening at the time and ongoing to the present day. Former Prime Minister John Diefenbaker, the only prime minister ever to hail from Saskatchewan or to be of German ancestry (his ancestry denoting his family’s post-1885 arrival on the prairies), formally announced his opposition to Riel being pardoned.<sup>90</sup> So too did the House of Commons oppose the pardon when in 1982 independent Member of Parliament Bill Yurko presented a motion to give “Métis rebel Louis Riel a posthumous pardon for his crime of high treason.”<sup>91</sup>

In 2009, Member of Parliament Peter Goldring sent a pamphlet to his Alberta constituents titled *The Truth About Louis Riel*. In the pamphlet he says Louis Riel

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<sup>89</sup> Flanagan, *Riel and the Rebellion 1885 Reconsidered*, viii; There is more to be addressed when making reference to Tom Flanagan that there simply is not the space for in this section. Flanagan is best known for his widely criticised publication, *First Nations? Second Thoughts*, which explicitly denies that the Aboriginal people of Canada have any title to the land or any additional or differing rights from average Canadian citizens. For a critical conversation of *First Nations? Second Thoughts*, see: Murphy, “Civilization, Self-Determination, and Reconciliation”; Flanagan was also a key political advisor to current Conservative Prime Minister Stephen Harper, who has his roots in the Reform Party of Canada. Flanagan is also the unofficial head of a loose organisation of Calgary-based academics that have been dubbed “The Calgary School”. They are known for their neo-conservative politics. For more information see: McDonald, “The Man Behind Stephen Harper”; Foster, “School for Paranoia: The Not-so-Scary ‘School’ behind Stephen Harper”; Flanagan also wrote: Flanagan, *Louis “David” Riel Prophet of the New World*.

<sup>90</sup> “Ottawa Will Make Decisions in Spring on Pardon for Riel.”

<sup>91</sup> Canadian Press, “Riel Denied Pardon.”

“twice used violent insurrection and death while challenging British and Canadian authority and Canadian unity.”<sup>92</sup> He furthermore calls Riel a “villain who caused more than eighty to die” and claims that there is little respect for “Canada’s first war veterans, who sacrificed their lives so that the Northwest Rebellion could be put down and Louis Riel brought to justice.”<sup>93</sup> Those first war veterans, Goldring says, “fought against Riel and saved our country from disintegration, so long ago.”<sup>94</sup> To challenge Riel’s conviction and hanging would be to judge the actions made in the name of national unity at the time. “How can we obtain a true appreciation for those issues,” Goldring questions, “without the sweat of fear and the odour of death that those events caused across the West in that era?”<sup>95</sup>

Offering another perspective on the figure of Louis Riel is Jennifer Reid, who does not approach Louis Riel as solely an Indigenous hero, a champion of Western Canada, or an anti-Canadian rebel. She says the relevance of Louis Riel, and the reason he continually resurfaces to have his legacy continually debated, is his representation of three of the most dominant conflicts in Canada’s history: that between Indigenous and settler, francophone and anglophone, and east and west. Reid argues that Canadians are lacking a singular discursive framework, which she sees as problematic given that shared memories are “foundational to the modern nation-state.”<sup>96</sup> Modern nation-states are “collectivities whose members share a geographical territory, mythic formulations, a civic culture, economic and judicial systems, and an agreed-upon set of core public responsibilities – none of which can

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<sup>92</sup> Goldring, “The Truth about Louis Riel,” 1.

<sup>93</sup> Ibid., 3–4.

<sup>94</sup> Ibid., 3.

<sup>95</sup> Ibid., 2.

<sup>96</sup> Reid, *Louis Riel and the Creation of Modern Canada Mythic Discourse and the Postcolonial State*, 73.

be established without recourse to memory.”<sup>97</sup> She sees that remembering 1885 could be the appropriate myth to rally around given the significance afforded Riel in Canadian discourse.<sup>98</sup>

Reid proposes a collective identity based on the recognition of the “fundamental disunity that defines the Canadian state.”<sup>99</sup> Thus, Canadians must do away with obsessing over the *nation* and instead focus on events, personalities, and general mythologies that unify the country as a *state*. Reid quotes Northrop Frye, who offers that “the past in Canada. . . is like the past of a psychiatric patient, something of a problem to be resolved: it is rather like what the past would be in the United States if it had started with the Civil War instead of the Revolutionary War.”<sup>100</sup> Northrop Frye sees that 1869-1870 and 1885 were akin to the Civil War, but without the collective memory of a unified nation-state fighting for autonomy against a greater, outside force like the United States has with the Revolutionary War. Reid argues that Canadians have no grand historical event around which they can rally, and so they must rally around the critical disunities embodied by Louis Riel.

The notion of Canadian identity being rooted in disunity, difference, or a lack of sameness in one way or another is not a unique contribution in and of itself. Multiculturalism is a key component of contemporary Canadian identity, entrenched in policy as a respect for the cultural background of all Canadians. Of the Indigenous/settler, francophone/anglophone, east/west dichotomies Reid identifies, there are clear winners and losers in terms of where power, influence and legitimacy are located and where they are not. It is not worthwhile to rally around disunity if

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<sup>97</sup> Ibid.

<sup>98</sup> Ibid., 245–246.

<sup>99</sup> Ibid., 246.

<sup>100</sup> Ibid., 219.

there is no model for acknowledging that the power relations are skewed to privilege one side of the dichotomies over the other. If Canadians could hope to rally around Louis Riel, it might be because Indigenous and settler, francophone and anglophone, and east and west shared equal power, influence and legitimacy in Canada. Otherwise, what is privileged, and what is not, is obscured. In the next chapter I will revisit the idea of cultural difference as it is manifested in the contemporary settler society of Canada. The issues of privilege in a society that prides itself on rallying around accepting cultural difference will be shown to obscure where power lies in settler society. First, however, I finish this chapter with a final section that takes up John Ralston Saul's contemporary reckoning with Canada's history of disunity.

## **H. A fair country**

John Ralston Saul, as well as being an anglophone settler from the East, is also a popular Canadian cultural philosopher. In his 2008 book *A Fair Country: Telling Truths About Canada*, Saul says that Canadians are suffering from a profound disconnect with their history, which is to blame for the absence of a collective identity. If Canadians were to connect themselves with their history, Saul says it would look like this:

We are a people of Aboriginal inspiration organised around a concept of peace, fairness and good government. That is what lies at the heart of our story, at the heart of Canadian mythology, whether francophone or anglophone. If we can embrace a language that expresses that story, we will feel great release. We will discover a remarkable power to act and to do so in such a way that we will feel we are true to ourselves.<sup>101</sup>

Saul spends the rest of the book demonstrating what it means to embrace that

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<sup>101</sup> Saul, *A Fair Country*, xii.

language to express the story of Canada as one organised around peace, fairness and good government. He has done away with the stories that justify Canadian expansion through narratives of Indigenous degeneracy but has still come out the other end with conclusions that match those of Stanley, Creighton and Morton: the fundamental goodness of Canada.

Saul pontificates that as a nation, Canada has been denying its true identity as a uniquely “métis civilisation.”<sup>102</sup> In desiring an image of ourselves, we have misrecognised our own image in the imperial, nation-building theories of the past; through history we have managed to create “elaborate theatrical screens of language, reference and mythology to misrepresent ourselves to ourselves.”<sup>103</sup> Mimicking Julia Kristeva’s esoteric writings on the foreigner, Saul questions that:

...perhaps the sympathy and guilt expressed toward  
Aboriginals are actually signs of non-Aboriginal self  
denial – the sort of denial that makes us dysfunctional  
because we cannot embrace who we are. In colonial  
terms, this sort of denial is an expression of self-  
loathing.<sup>104</sup>

Referring to Aboriginal people as the *others* in the tradition of post-colonial discourse, Saul further offers that “perhaps *the other* we denied and feared was actually the possibility of becoming something more complex, an integral part of that *other*.”<sup>105</sup> This sense of self-loathing and this internalisation of the other can be better contextualised in referring back to Kristeva. Kristeva offers the following:

Foreigner: a choked up rage deep down in my throat, a  
black angel clouding transparency, opaque, unfathomable

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<sup>102</sup> Ibid., 3 Métis with an upper case “M” refers to the culturally unique and constitutionally recognised group of Aboriginal people in western Canada who were the subject of most of this chapter. Métis with a lower case “m” is a more inclusive term that refers to anyone of combined Indigenous and non-Indigenous heritage.

<sup>103</sup> Ibid.

<sup>104</sup> Ibid., 5.

<sup>105</sup> Ibid., 6. Emphasis original.

spur. The image of hatred and of the other, a foreigner is neither the romantic victim of our clannish indolence nor the intruder responsible for all the ills of the polis. Neither the apocalypse on the move nor the instant adversary to be eliminated for the sake of appeasing the group. Strangely, the foreigner lives within us: he is the hidden face of our identity, the space that wrecks our abode, the time in which understanding and affinity founder. By recognising him within ourselves, we are spared detesting him in himself.<sup>106</sup>

One might imagine that Kristeva could be talking directly about some interpretations of colonial relationships and distancing her notion of the foreigner specifically from them in saying the foreigner is *not* “the romantic victim of our clannish indolence.” It is a vastly different phenomenon to discuss the foreigner and Indigeneity (or in Saul’s terminology, the Aboriginal,) but Saul is nonetheless borrowing Kristeva’s logic in explaining that these complicated social divisions between Aboriginals and non-Aboriginals can be mended by internalising Aboriginality as a fundamental part of the self-identification of Canadians. Saul claims that there are several unique characteristics that Canada has as a nation, including a penchant for peaceful conflict resolution over violence, egalitarianism, and achieving a balance between the needs of the individual and the group, all of which speak to our national Aboriginal heritage. As such, Saul concludes all Canadians are the product of a métis civilisation.

Turning to the subject of the 1885 Rebellion, it is evident that Saul is diverging in his perspective from the classic nation-building historians when he says “this was the lowest moment in our history.”<sup>107</sup> He elaborates upon why with the following:

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<sup>106</sup> Kristeva, *Strangers to ourselves*, 1.

<sup>107</sup> Saul, *A Fair Country*, 18.



1885 saw the fullest expression of the European-U.S. monolithic view of how to run a country. It was all about applying old European prejudices in a new place. The stronger party acted as if physical strength were moral virtue and therefore justified any sort of action, as if any weaker party, any minority, could be swept away at will, as if Canada could be forced into the monolithic model so dominant elsewhere in the Western world. The reason Canadian debates keep coming back to the tragedies of 1885 is that they represent the clearest warning shot we have of how not to act.<sup>108</sup>

Saul reflects the ideas of previous scholars on the subject in asserting that 1885 was among the most critical junctures in Canadian history and that it has left an indelible mark on the Canadian psyche. Saul takes the mythology told from the foundational histories of Creighton, Morton and Stanley and reinterprets them through a contemporary, liberal lens that would abhor the subjugation of Indigenous people. For Saul, as it is for Creighton, Morton and Stanley, the story of 1885 is a story about a war levied in the name of Indigenous rights. The only difference is that for Saul, it was a just war. While Creighton, Morton and Stanley are championing the actions of the Canadian government to assert peace, order and good government in the Wild West and the bravery of the settlers who tamed the land thereafter, Saul is condemnatory. How does Saul reconcile his repugnance at the events of 1885 and the core of his thesis that Canada is *A Fair Country*?

Saul's construction of the settler population is scathing. Of the Rebellion in 1885 and of starving First Nations throughout the 1870s and 1880s, Saul says "none of it need have happened. And not all Canadian leaders were in agreement with the conviction of the new settlers that they should be allowed to sweep all before

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<sup>108</sup> Ibid.

them.”<sup>109</sup> Saul manages to side-step Canadian responsibility for the violence of western settlement in a manner reminiscent of Morton brushing off the responsibility of the Canadian government to let the people inhabiting the North West Territory know that their land had been sold and Canada was now in charge by saying it was really an “was an imperial rather than a Canadian responsibility.”<sup>110</sup> For Saul, it was not a slow, deliberate process over decades during which the central Canadian government decided to purchase Rupert’s Land and then passed incrementally more controlling legislation so as to suppress the First Nations, Métis and settler population already there; it was the settlers pounding at the door looking to “sweep all before them” that resulted in so much strife.

Métis historian Heather Devine speaks to the realities facing the people in the newly acquired west in the 1880s in her 2004 publication *The People Who Own Themselves: Aboriginal Ethnogenesis in a Canadian Family, 1660-1900*. Devine reprints a letter from 1883 written to the Minister of the Interior, who was at this time Prime Minister Macdonald, signed by members of treaty six. This is the precise period of poverty and starvation that Saul is making reference to in speaking about the inhumanity of the settlers. Setting aside for a moment the wealth of historical writing that would challenge Saul’s attempt to relinquish the responsibility of the Canadian government, much of which is already cited in this chapter, the letter from Devine’s text is below. In the letter, the signatories Chief Bob Tail, Chief Samson, Chief Ermine Skin, Chief Woodpecker, Maminonatan, Agowastin, Siwiyawiges, Iron Head and William, write the following:

Now, we consider this treatment an outrageous breach of

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<sup>109</sup> Ibid., 17.

<sup>110</sup> Morton, “The Bias of Prairie Politics,” 14.

good faith, but of course we are Indians. Why does not the head man of the Indians ever appear amongst us, he whom we call in our language the "white beard" and by the whites called Dewdney? He took a rapid run once through our country; some of us had the good or bad luck to catch a flying glimpse of him. He made us all kinds of fine promises, but in disappearing he seems to have tied the hands of the agents so that none of them can fulfil these promises. This is the cause of our dire want now. We are reduced to the lowest stage of poverty. We were once a proud and independent people and now we are medics at the door of every white man in the country; and were it not for the charity of the white settlers who are not bound by treaty to help us, we should all die on government fare. Our widows and old people are getting the barest pittance, just enough to keep body and soul together, and there have been cases in which body and soul have refused to stay together on such allowance. Our young women are reduced by starvation to become prostitutes to the white man for a living, a thing unheard of before amongst ourselves and always punishable by Indian law. What then are we to do? Shall we not be listened to?

...

We have been calling during several years for the means allowed us by treaty to work for ourselves and we can get no satisfaction. Shall we still be refused, and be compelled to adhere to the conclusion spoken of in the beginning of this letter, that the treaty is a farce enacted to kill us quietly, and if so, let us die at once? Even last year some of those entitled to back pay were refused on authority from Ottawa. The government then can break every article of the treaty in detail or in globo and we have no redress.<sup>111</sup>

First Nations people surviving in part on fare provided by settlers in the absence of Ottawa's assistance provides a stark contrast to the construction of a callous group of settlers suffering from delusions of entitlement who end up starving their Indigenous neighbours and wilfully throwing them into the depths of poverty. As mentioned earlier in this chapter, the 1880s were a very difficult time for most on the prairies due to environmental and economic factors. The entire region was struggling to

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<sup>111</sup> Devine, *People Who Own Themselves*, 148–152.

survive through a depression and the majority of those in the region were disillusioned with the federal government's expansionist agenda that had failed to benefit them, which in turn caused the 1885 Rebellion.

Saul manages to reduce Canadian culpability for western expansion, which in his mind represents "the clearest warning shot we have of how not to act," by passing responsibility to the settlers who took up what was advertised as empty land. Saul points the finger at those who lived most closely with Indigenous people for the longest amount of time as the most immediate culprits of Indigenous oppression, as opposed to the result of a distant power seeking to exploit the land and the people on it. "Colonialism," defines Saul, "is a denial of the reality of self in favour of an imaginary special position inside the mythology of someone else's empire."<sup>112</sup> It is a harsh definition, but speaks to the anxiety with which nation-building myths are held with iron-clad grip in the West. If Canada, or by extension Britain, is the empire, and western settlers are the colonisers, then it is western people living out an imaginary special position in the history of the country.

The root of western grievance is a lack of acknowledgment for the contribution of the region to the nation beyond its use as a frontier resource base. While settling the West was mythologised in service of someone else's empire, that the challenges of settlement would represent something imaginary in Saul's account can only be voiced from a place of distance, where the self is more easily abstracted from the concrete reality of colonisation. The history of the prairies has been marred by lengthy periods of poverty and starvation, from the 1870s and 1880s to the Dust Bowl and Depression of the 1930s. The prosperity of the region has always been at

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<sup>112</sup> Saul, *A Fair Country*, 19.

the mercy of the elements and dependent on international commodity markets. What for, if not in service of something greater? There is a lot at stake for westerners in a Canada that eschews the contribution of the settled west in exchange for distant moral righteousness.

Saul finishes his book by coming full circle with a greater articulation of his first claim that Canada is a métis civilisation. Despite the endemic Canadian disconnect with history, “we continue to draw closer to our original model,” as exemplified by Canada during the fur trade.<sup>113</sup> Saul substantiates this statement by talking about the high number of Canadian citizens who are foreign-born, particularly in Toronto, and by referencing a number of staggering statistics about the increasing number of mixed race couples all over Canada making for more complex relations. He says that “we are now recreating that most basic atmosphere of early Canada, with the number of mixed-race couples growing five times faster than couples in general.”<sup>114</sup> He says this is bringing Canada closer to the way it was in the seventeenth and eighteenth centuries when Canada was “a deeply complex mix and no one then could pretend that this was a particularly British place,” as became part of the national consciousness in the nineteenth century.<sup>115</sup> He continues that “even more important, this métis factor is above all growing in the big cities, where it is at least 10 percent, creating an interesting link between our new urban life and the original Canadian reality. In some professional circles, it’s more like 50 percent.”<sup>116</sup> His use of a Kristeva-like logic foreshadows the fact that he would end up conflating constructions of the foreigner and the Aboriginal in his end result.

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<sup>113</sup> Ibid., 314.

<sup>114</sup> Ibid.

<sup>115</sup> Ibid., 312.

<sup>116</sup> Ibid., 314.

His grand reveal of what Canada's burgeoning métis civilisation looks like, which he says is built on a foundation of Aboriginal ideas profoundly influencing Canadian values, is to be found in Canada's few big cities. The place furthest away from where most Aboriginal people live in Canada, Saul argues, is where one can find the strongest evidence for the Aboriginal influence on the nation. Saul's aspirations for such complex relations that no one could even pretend Canada was a particularly British place, is a problem more specific to some areas of the country than others. By his own definition, the prairies have been a métis civilisation from the original Métis to the mass arrival of settlers, mostly from a variety of non-British European countries. What Saul presents is not "an interesting link between our new urban life and the original Canadian reality" as much as it is a repetition of the theme of centre versus periphery, hinterland versus metropolis: the enlightened, civilised east, and the backwards, uncivilised west. In its modern reincarnation, this mythology removes culpability from the centre in favour of maintaining that the root of Canadian identity is one of benevolence. Furthermore, to use Saul's terminology, it encourages those who live in big cities as part of, or surrounded by, mixed race couples, to misrecognise themselves as removed from the colonial realities on which their country was built. Understanding that all of Canada owns the nation's settler colonial history, though it may surface in different ways in different parts of the nation, is a lesson to be learned from Saul's *A Fair Country*.

## Conclusion

In tracing the history of the West in Canada, this chapter has shown that the oppression of Indigenous people in the West was intertwined with the takeover and

management of the West as a region. The West became Canadian through violent subjugation and oppressive federal government policies that starved First Nations people, failed to account for Métis people, and were wholly disinterested in white settlers until the land was reorganised for large scale settlement and agricultural development. A fractured western identity was the ultimate result. The incoming settler populations did not identify socially or politically with the region's earlier struggles for autonomy that had united their settler predecessors in the West with their Indigenous neighbours. As a result of this disjuncture, social and political organisation around western alienation took on a separate, and sometimes oppositional, trajectory from issues facing Indigenous people.

An obsession with defining the unifying characteristics that bring Canada together as a nation has overwhelmed the historical account of the late nineteenth-century west in Canadian history. The transition has been from a glorifying version of history espoused by Stanley, Creighton and Morton to a regional history that questions the authority of national narratives exemplified by Adams, O'ram and Conway. Jennifer Reid supposes that the most famous figure remembered from this critical time in Canadian history, Louis Riel, might be the mythical embodiment of unity through disunity as the rallying point that could hold Canadian identity together. John Ralston Saul returns to notions of unity derived from a benevolent Canada, offering that "we are a people of Aboriginal inspiration organised around a concept of peace, fairness and good government."<sup>117</sup> He reconciles the violence of 1885 as attributable in large part to the eagerness and hubris of settlers. He makes the consolation that Canadians are, in spite of negative events in the past, now

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<sup>117</sup> Ibid., xii.

returning to their original model as a métis civilisation as evidenced by the complex mixing of people from a variety of backgrounds, to be found mostly in Canada's large cities.

Saul's attempt at national unity highlights the difficulty in maintaining a unifying vision of Canada as a benevolent nation without supporting an outdated intellectual model that defines Indigenous people as uncivilised, or otherwise refocuses blame away from the central Canadian government. This demonstrates the value of maintaining the legitimacy of earlier, nation-building narratives of expansion in the West and the anxieties present when they are in question. This was in part illustrated by the continued relevance and passion with which people discuss the Resistance and Rebellion, and the legacy of Louis Riel. This chapter offered some perspective on what is at stake for the West when those foundational stories are at risk of showing how sentiments of western alienation might connect with colonisation.

The uncomfortable irony of having been through all these attempts to establish national Canadian unity is that there is one obvious thing that does unify all Canadians; all Canadians live on Indigenous land in a country where Indigenous peoples' most important role was, ultimately, to disappear with the virtues of progress.<sup>118</sup> While attempts might be made to justify it, to call it natural, or to abhor it and place blame elsewhere, that is a story that belongs to all Canadians.

Saul says that "all of these earlier negative incidents lie far behind us. So far behind that we forget the extent to which their effect is still obscuring our

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<sup>118</sup> Shohat and Stam, *Unthinking Eurocentrism*, 119.



understanding of Canada's real foundation."<sup>119</sup> The earlier negative incidents are not as far behind Canada as Saul might like to believe. The violent colonisation that took place in Canada's history still resides in Canada's present. It is a form of privilege distant enough so as to be blind to the continued colonialism that emanates from those 'earlier negative incidents', but in the geographic location where the historic fall out took place, and the place whose regional identity is tied to that of the frontier in the national imagination, blindness to the effect of colonisation requires more work. The Tisdale rape case is but one example of Canada's legacy of colonialism, the nation's contemporary existence as a settler colonial society and the West's continuing place as Canada's frontier. Moving forward from the historical context presented in this chapter, the next chapter will theorise what has been described here as a process of settler colonisation, laying the methodological groundwork for analysing the trial transcripts pertaining to the Tisdale rape case.

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<sup>119</sup> Saul, *A Fair Country*, 314.

## Chapter 3

### Exploring 'The Land of Rape and Honey': Race, space and gender in a settler colonial society

This chapter explores the theoretical perspective and methodological choices made in undertaking the research project, as well as an assessment of the methods applied and a reflective ethical review of the research. The first section will briefly contextualise the problem and area of study and define the research questions. The next section will speak to the theoretical and methodological approach taken with respect to understanding the area of study and framing the research questions. This theoretical and methodological approach frames the area of study within a feminist reading of interlocking systems of domination as manifested within a settler colonial society. Here, I discuss the decision to analyse the trials of *R v Edmondson* and *R v Brown and Kindrat* across lines of gender, race and space and how difference in the courtroom is managed through 'culture talk'.

I will then provide an account of my strategy for interpretation, including choosing a case study as the research design, as well as the methods of data collection, organisation and the process of conducting a thematic analysis. I will conclude with an ethical review reflecting on the difficulties and dilemmas that have surfaced in the research process, including gaining access to the transcripts and their arrival in an unexpected and problematic form. I will also consider my own position as settler from Saskatchewan in relation to the topic I have chosen to research.

#### A. Area of study and research questions

Canada is widely regarded as a liberal, multicultural nation that prides itself on a

history of peace and tolerance. Roger Maaka and Augie Fleras have suggested that:

Canada is a paradox. To one side, Canada is widely seen as a beacon of enlightenment in engaging with indigeneity. There is global admiration for the 'Canadian way' in exploring models for living together differently that balance a universal humanity with a commitment to personal autonomy and cultural rights."<sup>1</sup>

The paradox poignantly reveals itself in the discontinuity between Canada as a liberal, multicultural nation and the gross disparity between Indigenous and settler populations in the country. Maaka and Fleras quote from a 2001 article in Canada's *National Post* newspaper in which columnist Roy MacGregor says:

People are beginning to ask aloud how it is that this remarkable country called Canada could, year in and year out, be chosen the No. 1 nation in the world for its quality of life – and yet this same country could hold a massive, scattered Aboriginal population that live in Third World conditions.<sup>2</sup>

The business of this thesis is ultimately to engage with this disparity as it exists on the Canadian prairies. Disparity between Indigenous and settler populations in Canada is acutely seen on the Canadian prairies, where a high proportion of Indigenous people live. As described in the previous chapter, this is also a region of the country where the settler population has expressed a sense of alienation from the core, more generally referred to as 'western alienation' in the Canadian context. Western alienation is rooted in a history of what Loleen Berdahl calls a "quasi-colonial" relationship with the federal government.<sup>3</sup> The development of this quasi-colonial relationship was described in depth in the preceding chapter in discussing the absorption of the West into Canadian Confederation and positions the West as

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<sup>1</sup> Fleras, *The Politics of Indigeneity*, 155.

<sup>2</sup> qtd. in *ibid.*

<sup>3</sup> Berdahl, "Western Alienation."

Canada's persistent frontier.

The historical analysis in chapter 2 proposes that there is a conflation between Western Canadian identity, as understood through post-Rebellion readings of Western Canadian history, and settler colonial identity as understood in contemporary Canada, with the West positioned as Canada's continuing frontier. Through a thematic analysis of two criminal trials - *R v Edmondson* and *R v Brown and Kindrat* - this thesis will consider how the identification of the West as Canada's continuing frontier is implicated in the maintenance of a national settler-colonial identity. The first two chapters of analysis (chapters 4 and 5) point to how settler colonialism is played out on the prairies, how it is connected back to a sense of rugged regional identity, and how it inscribes 'the truth' of what happened to be one in which settler society remains innocent and unacknowledged. The final chapter of analysis (chapter 6) proposes a counter-narrative to the regional settler colonial logic of the first two by proposing the complainant's voice and experience of what happened be made present and be believed.

The process through which I came to my research questions is explored fully in the introduction to this thesis. The questions I pose in this thesis are divided into two separate but related stages. The first stage is to ask: how do we settler Canadians in the West make sense of the disparity between Indigenous and settler populations in the region? How can the history of the region help us understand where this disparity has come from and to what extent is the history still manifested in contemporary moments of conflict? The second stage, proposing *R v Edmondson* and *R v Brown and Kindrat* as a contemporary moment of conflict, asks what aspects of privilege and oppression are made evident in the trials. Further to this, what do

the trials of *R v Edmondson* and *R v Brown and Kindrat* tell us about how difference between Indigenous and settler communities are constructed in the West?

Investigating these research questions will go some way to accounting for the paradox between Canada as a nation globally admired for its commitment to human rights as a liberal multicultural state, and as a nation in which there is such a high degree of disparity between Indigenous and settler populations. The West, as a place where this disparity is acute, is well positioned as a site for analysis. By searching our collective history for an understanding of how settler colonialism has affected the culture of those who were and are settlers, I propose that we settlers might come to some understanding of our own roles in contemporary colonialism. The following section will take up the theoretical and methodological choices that underpin my optimistic approach. Beginning with a focus on intersectionality and interlocking systems of domination, the next section is one informed by authors who have also prioritised the need to come to grips with the manifestations of privilege in forwarding an emancipatory agenda.

## **B. Interlocking systems of domination in a settler colonial society: Thinking about privilege and talking about difference**

Before speaking of specific methodological choices, I will state here that the epistemological approach of this thesis is one that views categories such as race and gender as social constructions. This is to say that such identifications are presumed to be malleable and not understood as fixed to inherent biological essences. Coming from a social constructionist epistemology, my methodological choices reflect the importance of the social, political and historical contexts in which categorisations of

identity-making are made meaningful. This epistemology is aligned with that of intersectional feminist theorists, and those proposing an analysis based on interlocking systems of domination, who argue that multiple aspects of identity converge to create a different kind of subjectivity than that of one aspect alone, or one aspect simply added to another. This section begins with a conversation about how subjectivity is conceived of in intersectionality and then more specifically in terms of my approach and analysis, which uses Sherene Razack's conception of interlocking systems of domination. I will then explore the broader context in which subjectivity is made meaningful in this thesis - that of Canada as a settler colonial society. I have gone some way to describing the West's place in Canada as a settler colonial society in the preceding chapter, but here I will offer a theoretical analysis of settler colonialism and how it is animated through gender, race and space.

## Intersectionality and Interlocking Systems of Domination

Intersectionality is a response to the essentialism of earlier 'identity-based' movements rooted in liberal or Marxist/socialist ideology. Its beginnings were in the responses of Black feminists, notably Kimberle Crenshaw, to a predominantly white, middle class feminism. "The intersectional experience," Kimberle Crenshaw writes, "is greater than the sum of racism and sexism."<sup>4</sup> Crenshaw offers the analogy of an intersection (which is where the perspective gets its name), saying

Discrimination, like traffic through an intersection, may flow in one direction and it may flow in another. If an accident happens at an intersection, it can be caused by cars travelling from any number of directions and sometimes from all of them.<sup>5</sup>

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<sup>4</sup> Crenshaw, "Demarginalizing the Intersection of Race and Sex," 140.

<sup>5</sup> Ibid., 149.

Coming from a feminist legal perspective, Crenshaw demonstrates through examples in case law how black women are protected and advocated for inasmuch as the discrimination they face overlaps with the experience of white women, or otherwise black men. Their experience as black women is “theoretically erased” in antidiscrimination law and politics, as well as feminist theory, when racial and gender discrimination are considered “mutually exclusive categories of experience and analysis.”<sup>6</sup> The hybrid discrimination experienced by being both black and women complicates what is assumed to otherwise be clear instances of either ‘pure’ racism or ‘pure’ sexism as it applies to black men and white women.

As mentioned above, intersectionality is a response to essentialist theories and social and political movements that require an internal seamlessness of identity and experience. Rebecca Johnson notes “that anti-essentialism for its own purpose was a weak insight . . . To have any political value, the critique had to be combined with a strategy of anti-subordination. Intersectional theory attempts to do just that.”<sup>7</sup> Consistent with a social constructionism that seeks to avoid essentialising identities, this thesis allies with intersectionality as a theoretical perspective that offers an analytical framework through which the individuals in the trial can be made sense of within larger systems of domination. It is a theory through which an anti-essentialist epistemology can be operationalised in a politically meaningful way. Since Crenshaw’s first use and application of the term ‘intersectionality’, many scholars, including Crenshaw herself, have expanded the theory in several different directions

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<sup>6</sup> Ibid., 139.

<sup>7</sup> Johnson, “Gender, Class and Sexual Orientation: Theorizing the Intersections,” 29.

to speak to a wide variety of contexts.<sup>8</sup>

Intersectionality as it is applied in this thesis draws heavily from the work of Sherene Razack, whose formulation of interlocking systems of oppression pays homage to the 'matrix of domination' as described by Patricia Hill Collins.<sup>9</sup> As articulated by Collins, there is no one, singular source of domination but rather a matrix of intersecting axes that serve to oppress and advantage different individuals in varied groups from varied nations in varied circumstances. The matrix of domination is site specific, and dependent upon the history and social make-up of a given society. The matrix is realised in different but interlocking domains of power. Such domains would speak to structural, legal, and political limits on who can do what and be manifested in forms of social discipline that surface as cultural norms and 'common sense' ideas of what is rational and fair, and *just the way things are*.

The matrix is also manifested at the interpersonal level where individuals make sense of who they are and their place in society in relation to the structural and cultural norms within which they have come to know themselves. "Depending on the context," Collins writes, "an individual may be an oppressor, a member of an oppressed group, or simultaneously oppressor and oppressed."<sup>10</sup> Individual identities are complicated and frequently contradictory when viewed from within a matrix of domination. The application of intersectionality as espoused by Collins requires that a researcher conceive of individuals within a matrix of domination that seeks to understand not just the experience of oppression, but also privilege, and how both

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<sup>8</sup> See, for example: Grabham, *Intersectionality and beyond*; Crenshaw, "From Private Violence to Mass Incarceration: Thinking Intersectionality About Women, Race and Social Control"; MacDonald and Osborne, *Feminism, Law, Inclusion*; Stasiulis, "Feminist Intersectional Theorizing."

<sup>9</sup> Razack, *Looking White People in the Eye*, 12.

<sup>10</sup> Hill Collins, *Black Feminist Thought Knowledge, Consciousness, and the Politics of Empowerment*, 221.



can exist within one person at any given time. A story drawn from the trials that focuses solely on the manifestation of oppression would miss the nuance of how systems of domination create a particular kind of relationship between privilege and oppression depending on the context.

This is a critical insight for understanding the trials at the centre of this thesis. As was expressed in the brief introduction to the storyline of the trials, no one in the courtroom seeks to challenge that the complainant fits some category of oppressed persons, with reference made to her having been “dealt a pretty bad hand in life” (R v Edmondson, Judge’s Sentence: 6). However, without recognising the relative privilege of her attackers, her oppression exists in isolation. It is something that emanates from her/her family/her community, and thus something separate from the larger relational context in which she, Brown, Edmondson and Kindrat all exist. Collins says people have an easier time recognising instances of their oppression than they do conceiving of how their “thoughts and actions uphold someone else’s subordination.”<sup>11</sup> Collins’ insight demonstrates that it is just as critical to an emancipatory politics to be aware of not only oppression, but also privilege.

Sherene Razack’s theorising is heavily influenced by Patricia Hill Collins, but speaks more specifically to the Canadian context in which this thesis is situated. Her approach is what she calls “an interlocking analysis” which involves the same kind of acknowledgement of a multiplicity of systems of domination, with an important emphasis on how interlocking systems of domination function together to give each other meaning.<sup>12</sup> Razack has a similar commitment to identifying privilege. Key to Razack’s approach is an understanding of how systems of domination create and re-

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<sup>11</sup> Ibid., 287.

<sup>12</sup> Razack, *Looking White People in the Eye*, 13.

create oppression, and also an analysis of how privilege manifests as an unwillingness to see oneself implicated in relations of power. Razack identifies that the overarching, “central thought” regarding the manifestation of privilege is via the concept of maintaining innocence by maintaining one’s blindness to their privilege.<sup>13</sup>

Blindness to privilege is the mechanism by which there can be genuine distress expressed at the oppression of others, while simultaneously a profound unwillingness to hear how one is implicated in the power relations that validate and necessitate the oppression. Her interpretation is with specific reference to the settler colonial context in which she says interlocking systems of domination are powerfully evident across lines of race, gender and space. These same lines of power and domination form the cornerstones of my analysis and theoretically underpin my analysis of *R v Edmondson* and *R v Brown and Kindrat* in this thesis. The next few sections will detail the relevance of race, gender and space in reflecting on the settler colonial context.

## Theorising settler colonialism as distinct from post-colonialism

The process by which settler colonialism occurs, what it looks like in Western Canada, and what it means to Canadian national identity more broadly, was the subject of the preceding chapter. That chapter centred on the acquisition of what was then known as Rupert’s Land. It detailed the process through which the Canadian government sought control of the land, defined the spatial boundaries and the bodies therein, as narrated largely by white, Anglo, male historians. In this section, I am theorising the concept of settler colonialism as the imposition of a structure that

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<sup>13</sup> Ibid., 22.

persists. This differentiates my theoretical perspective from a post-colonial perspective.

Put very simply, and evidenced in the previous chapter, a white settler colonial society is one in which Europeans establish settlement on non-European lands through the elimination of Indigenous people. As in a post-colonial context, the imposition of this power structure results in a racial hierarchy. However, in a post-colonial context it is imagined that an external power structure exists for a prescribed period of historical time (colonialism) and is then removed or slowly retracted (post-colonialism) with increasing autonomy devolved back to the inhabitants. There are varying ramifications to this process of domination and devolution which post-colonial theorists then concern themselves with. The presence of the colonial power in the first instance is also generally premised on the allocation of resources to be sent back to the colonial homeland, for which the natives are used as the labour to extract. Patrick Wolfe points to the work of eminent post-colonial theorists such as Frantz Fanon<sup>14</sup> and Amílcar Cabral<sup>15</sup>, noting that their work does not adequately apply to a context in which a minority population of colonisers are not dependent on the native for labour.<sup>16</sup> In Wolfe's own work, he focuses on the Australian context but Canada fits the same criteria.

By contrast to what is imagined by the likes of Fanon and Cabral as post-colonial theorists, settler colonialism describes a context in which the colonial power stays, is dominant in numbers, and creates a new society. The creation of a new society discursively re-creates the settlers as the original inhabitants through their

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<sup>14</sup> Fanon, *Black Skin, White Masks*.

<sup>15</sup> "In Memoriam."

<sup>16</sup> Wolfe, *Settler Colonialism and the Transformation of Anthropology the Politics and Poetics of an Ethnographic Event*, 2.

productive use of land. Eminent Canadian philosopher and one-time Prime Ministerial hopeful, Michael Ignatieff elucidates the logic of productive land use affording legitimacy best when he says,

Native peoples have always accepted, with varying degrees of willingness, the fact that being first possessors of the land is not the only source of legitimacy for its use. Those who came later have acquired legitimacy by their labours; by putting the soil under cultivation.<sup>17</sup>

Settler-colonialism is preoccupied with an acquisition of Indigenous land which the settler then gains the legitimacy to, as well as being conferred the rights of citizenship to the new society, via their productive labour. As Patrick Wolfe says, “settler colonialism destroys to replace.”<sup>18</sup> Settler colonialism is, thus, not a specific event in time, but rather the presence of a structure.<sup>19</sup> The structure itself is all at once spatial, racialised, and gendered.

### Theorising settler colonialism through race, gender and space

The culture from whence Canadian settler colonialism came is rooted in a patriarchal philosophical tradition that draws oppositional boundaries between reason and science on one hand, and nature and emotion on the other. The former is the domain of men, and the latter the domain of women. That is, of course, a very simplified understanding of patriarchy. It is relevant here with reference to the prescribed gender roles of men and women in the settler colonial project that follows from a patriarchal logic. Articulated by human geographers, historians, literary theorists and

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<sup>17</sup> Ignatieff, *The Rights Revolution*, 123.

<sup>18</sup> Wolfe, “Settler Colonialism and the Elimination of the Native,” 388.

<sup>19</sup> Wolfe, *Settler Colonialism and the Transformation of Anthropology the Politics and Poetics of an Ethnographic Event*, 2.

social scientists alike, the role of women in empire was primarily in the domestic sphere as the keepers of culture and civilisation while the role of men was in attaining mastery over new and dangerous lands through exploration and mapping.<sup>20</sup> Even speaking of masculinity more broadly conceived, Connell makes reference to masculinity on the edges of empire as an especially resonant version of masculinity:

Popular culture tells us without prompting. Exemplars of masculinity, whether legendary or real – from Paul Bunyan in Canada via Davy Crockett in the United States to Lawrence 'of Arabia' in England – have very often been men of the frontier.<sup>21</sup>

The imagery of 'men of the frontier' looms large in the Canadian imagination as the embodiment of the rugged settler "pitting themselves against the harshness of the climate."<sup>22</sup> Such images of a "glorious past," Carl Berger reminds us, are also profoundly raced.<sup>23</sup> He says the mythology of such images "denote not merely a geographical location or climactic condition but a combination of both, moulding racial character."<sup>24</sup> The mythology surrounding this image is foundational to the nation-building narratives as explored in the preceding chapter, and firmly in ideations of the West as a place dominated by white men.<sup>25</sup> Indeed, the space of the Canadian West was, quite literally, "a male-dominated settlement frontier" where concerns about shortages of (white) women continued into the pre-war period of the early twentieth century.<sup>26</sup>

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<sup>20</sup> Among others, see: McClintock, *Imperial Leather*; Domosh and Seager, *Putting Women in Place*; Carter, *Capturing Women the Manipulation of Cultural Imagery in Canada's Prairie West*; Mills, *Gender and Colonial Space*; Phillips, *Mapping Men and Empire*; Pratt, *Imperial Eyes*.

<sup>21</sup> Connell, *Masculinities*, 185.

<sup>22</sup> Razack, "When Place Becomes Race," 3; see also: Berger, "The True North Strong and Free"; Furniss, *The Burden of History Colonialism and the Frontier Myth in a Rural Canadian Community*; Shields, *Places on the Margin*.

<sup>23</sup> Berger, "The True North Strong and Free," 24.

<sup>24</sup> *Ibid.*, 5.

<sup>25</sup> Phillips, *Mapping Men and Empire*, 95.

<sup>26</sup> *Ibid.*

Connell connects patriarchal masculinity with settler colonial identity in saying, "With masculinity defined as a character structure marked by rationality, and Western civilisation defined as the bearer of reason to a benighted world, a cultural link between the legitimization of patriarchy and the legitimization of empire was forged."<sup>27</sup> The associations drawn from this cultural link connect the rationality of imperial power with masculinity and the chaos of the natural world over which mastery was to be asserted with femininity. McClintock illustrates this through a geographic conversation that revisits the concept of empires expanding into empty lands, as touched upon in the history section. Understood as gendered and racialised, McClintock argues that space is eroticised with reference to empty lands in the story of empire:

Within patriarchal narratives, to be virgin is to be empty of desire and void of sexual agency, passively awaiting the thrusting, male insemination of history, language and reason. Within colonial narratives, the eroticizing of 'virgin' space also effects a territorial appropriation, for if the land is virgin, colonised peoples cannot claim Aboriginal territorial rights, and white male patrimony is violently assured as the sexual and military insemination of an interior void.<sup>28</sup>

The practical process through which 'virgin' space is reconfigured as rightfully belonging to patriarchal settler society is through mapping.<sup>29</sup> Mapping 'virgin' lands, notes Kathleen Kirby, is a process through which "a coherent, consistent, rational space, paired with a stable, organised environment" is created to ensure mastery over a territory.<sup>30</sup> Kirby says further, "mapping embodies colonisation: materialising the

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<sup>27</sup> Connell, *Masculinities*, 186–187.

<sup>28</sup> McClintock, *Imperial Leather*, 30.

<sup>29</sup> Pratt, *Imperial Eyes*; Kirby, *Indifferent Boundaries*.

<sup>30</sup> Kathleen Kirby, "Re: Mapping Subjectivity: Cartographic Vision and the Limits of Politics," *Body Space: Destabilizing Geographies of Gender and Sexuality*, ed. Nancy Dunca, (New York: Routledge, 1996), 44.

land according to a European logic erases the order it might formerly have possessed, converting it into European land.”<sup>31</sup> There is nothing more symbolic of the imposition of a coherent, consistent rational space than the Dominion Land Survey which mapped the Western Canadian landscape by drawing “lines that majestically remind us of Euclidean geometry,” reflected too in “the perfect geometry of the Province of Saskatchewan” as well as “the molecular checkerboard of quarter-sections” within.<sup>32</sup>

The conversion of the West into a European space via the Dominion Land Survey is not simply a reorganisation of geographic land. The process through which the land has been re-organised is a political process that reaches beyond the geography. Lefebvre and Enders say “space has been shaped and molded from historical and natural elements,” which, in this instance, reflect the gendered and racialised norms of settler colonial society.<sup>33</sup> Beyond configurations of land, the concept of space extends to the bodies, and the movement of bodies, on the land. Boundaries are drawn in accordance with a racial hierarchy that demarcates spaces of whiteness from spaces of Indigeneity. We saw these boundaries drawn with what was referred to in the historical chapter by Joyce Green as the fourth and unnamed component of the National Policy: the organisation of Indigenous people onto small plots of reserve land through treaty making.<sup>34</sup> The previously nomadic Indigenous groups on the Western Plains were no longer able to move freely on the land, segregated to make way for agricultural development.

By contrast, the intrinsically patriarchal subjectivity of male settlers on the

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<sup>31</sup> Kathleen Kirby, *Indifferent Boundaries: Spatial Concepts of Human Subjectivity*, (New York: The Guilford Press, 1996), 55.

<sup>32</sup> McKay, “The Liberal Order Framework,” 641.

<sup>33</sup> Lefebvre and Enders, “Reflections on the Politics of Space,” 31.

<sup>34</sup> Shewell, *Enough to Keep Them Alive*, 13.

land is defined by mobility. Having mapped the land and defined its boundaries, male settler subjectivity is defined by movement between civilised European spaces, and the wild, uncivilised spaces of the racial other. Transgressing the boundaries between civilised and uncivilised spaces is a process of contemporary identity-making which Razack says, “enables men to experience themselves as colonisers and patriarchs, that is, as men with the unquestioned right to go anywhere and do anything to the bodies of women and subject populations they have conquered.”<sup>35</sup> The successful navigation of space encourages a sense of control and mastery over land won by individual fortitude that reifies the mythology of the rugged white settler. The white male settler returning unscathed to the civil space of home, is greeted by the white female settler “who stand[s] as the marker of home and civility.”<sup>36</sup> Razack says “For the settler, it is through movement from European to non-European space,” which he has mapped and demarcated, “that he comes to know himself, a journey that materially and symbolically secures his dominance.”<sup>37</sup>

Representations of Indigenous women in the story of settler colonialism, as defined by Janice Acoose, fall along the binary constructions of either “the Indian princess, an extension of the noble savage” on the one hand, “and the easy squaw” on the other.<sup>38</sup> In both instances, Indigenous women are defined in relation to their interaction with male settlers. The Indian princess is best personified in the character of Pocahontas; a ‘good’ Indian who laid down her life in service to a European man. The squaw is the ‘bad’ Indigenous woman. She personifies a “shadowy lustful archetype” of Indigenous women as promiscuous and savage, as drawn from early

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<sup>35</sup> Razack, “Gendered Racial Violence and Spatialized Justice: The Murder of Pamela George,” 136.

<sup>36</sup> Razack, “When Place Becomes Race,” 13.

<sup>37</sup> Ibid.

<sup>38</sup> Acoose, *Iskwewak--Kah' Ki Yaw Ni Wahkomakanak*, 39.



ethnocentric missionary accounts and beyond.<sup>39</sup> Extending from the patriarchal gender norms in settler colonial logic, Indigenous women were seen to be the bearers of their culture as well; a culture that was intended to be destroyed and replaced.

Sarah Carter notes that the racial hierarchy imposed by settler colonialism was gendered in that the supposed failure of Indigenous people in farming was held to chiefly be the failure “of the men to become other than hunters, warriors and nomads,” while the women’s failure was in their improper “cultural traits and temperament.”<sup>40</sup> What was perceived by European eyes as a poor state of housing, lack of hygiene and a lack of clothing, “as if their shame of their sinne deserved no covering,” spoke to the inferiority of the culture, and to the women as bearers of the culture.<sup>41</sup>

By contrast to the construction of white settler women as markers of civility in white society, Indigenous women were held to represent the primitive culture of Indigenous people that served to justify the ‘destroy to replace’ logic of settler colonialism. Indigenous women were believed to be even more ‘of nature’ than white women and lacking the same degree of propriety. The bodies of Indigenous women were materially and metaphorically constructed as dirty. Andrea Smith says “because Indian bodies are ‘dirty’, they are considered sexually violable and ‘rapable’.”<sup>42</sup> Smith draws a corollary between Indigenous lands being seen as inherently violable in the expansion narrative, and the primitive Indigenous bodies that were of-the-land as also inherently violable. Returning to the imagery of the squaw in a presentation to a Manitoba Justice Inquiry in 1990 Emma Larocque

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<sup>39</sup> Ibid., 42 and 44.

<sup>40</sup> Carter, *Capturing Women the Manipulation of Cultural Imagery in Canada’s Prairie West*, 160.

<sup>41</sup> qtd. in Smith, *Conquest*, 10.

<sup>42</sup> Ibid., 12.

testified that:

. . .the portrayal of the squaw is one of the most degraded, most despised and most dehumanised anywhere in the world...she has no human face, she is lustful, immoral, unfeeling and dirty. Such a grotesque dehumanization has rendered all Native women and girls vulnerable to gross physical, psychological, and sexual violence.<sup>43</sup>

Sexual violence perpetrated against Indigenous women, in the writings of eminent Indigenous scholars Andrea Smith, Emma Larocque and Janice Acoose, is a consequence of settler colonialism.<sup>44</sup> As primitive bodies, representative of the land and bearers of the culture settler colonialism intended to destroy, reorganise, and replace, Indigenous women are uniquely situated in a settler colonial society, most evident across the intersections of race, gender and space.

### Culture talk, feminism and the law

It is important to note too, the degree to which all Indigenous people have been constructed as primitive, or culturally inferior, has had repercussions for how sexual violence perpetrated against Indigenous women is constructed in contemporary settler society. Understood here as an outcome of interlocking racial and patriarchal hierarchies established through settler colonialism, conversations about sexual violence perpetrated against Indigenous women prominently features talk of *culture*. “Culture,” Razack says, “is taken to mean values, beliefs, knowledge, and customs that exist in a timeless and unchangeable vacuum outside of patriarchy, racism,

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<sup>43</sup> qtd. in *No More Stolen Sisters: The Need for a Comprehensive Response to Discrimination and Violence against Indigenous Women in Canada*, 5.

<sup>44</sup> Acoose, *Iskwewak--Kah' Ki Yaw Ni Wahkomakanak*; Smith, *Conquest*; LaRoque, *Defeathering the Indian*.

imperialism, and colonialism.”<sup>45</sup> “Culture talk” is a term used by Carol Schick and James McNinch to refer to the pervasiveness with which what would have been labelled as a *biological* inferiority at earlier points in history, has been re-written as a similarly insidious talk of *cultural* inferiority.<sup>46</sup> Schick and McNinch focus their analysis of the production of ‘culture talk’ in the Saskatchewan context in an edited volume of articles drawing attention to the management of difference in education, health care, social work, and the justice system. Read together with Razack’s concept of how the theme of culture surfaces in the justice system, ‘culture talk’ provides a methodological basis for orienting how difference is managed and made visible in the trials being analysed in this thesis.

Schick and McNinch draw attention to how professionals who are members of a variety of institutions including health, education, social work and the justice system are presumed to have a lack of knowledge about the other, and are thus educated so that they might learn about the culture of the other, or be trained to put themselves in the place of the others they encounter in their professional lives. The problem with this approach, as identified by Schick and McNinch, as well as others who employ a critical pedagogy such as Deborah Britzman and Kevin Kumashiro, is that this method does not require the group being educated about the other to question their own positionality as the normative referent against which difference is defined.<sup>47</sup>

The normative referent is thus produced, and re-produced as a neutral, blank slate that need not ever look reflexively at itself, but is instead encouraged to learn

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<sup>45</sup> Razack, *Looking White People in the Eye*, 58.

<sup>46</sup> Schick and McNinch, “Introduction,” xii.

<sup>47</sup> For more see: Britzman, “Queer Pedagogy and Its Strange Techniques”; Kumashiro, *Against Common Sense*.

about the other as a way to foster inclusivity or as a benevolent means to assist the other in modifying themselves to belong. The lack of self-reflection in learning about the other results in “difference being assumed to reside *in the other*” (emphasis original).<sup>48</sup> Difference residing *in* the other has the effect of masking the power relations that define the other as *the other* in the first instance.<sup>49</sup> It is not a dialogue between different but equal parties negotiating how to best get along; it is the identification of the other as different, buttressed by the invisibility of what is taken to be ‘normal’ and ‘neutral’. The difference is seen to reside *in* the other, mapping their physical bodies as the spatial site of difference, independent of any concept of what defines the dominant self, because that which is dominant need not question itself as the standard against which others are compared.

Learning about the other - in the liberal, multicultural Canadian context - is common practice, and is also a marker of privilege that one can come to possess *knowledge* about the other by being given information about them, or in being asked to put themselves in the shoes of the other. In a learning process where that which is dominant is never asked to recognise itself as dominant, the dominant group is encouraged to misrecognise themselves as neutral and objective; as though they can exist outside any power relations, taking in information about the other through neutral eyes and ears from which they can derive objective opinions about what they *know* about the other. This has particular relevance in the space of the courtroom, where jurors and judges are supposed to be neutral and objective in their judgments and determinations.

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<sup>48</sup> Carol Schick and James McNinch, “*I thought Pocahontas was a movie*”: *Perspectives on Race/Culture Binaries in Education and Service Professions*, Introduction, (Regina: Canadian Plains Research Centre, 2009), xiv.

<sup>49</sup> Sherene Razack, *Looking White People in the Eye: Gender, Race and Culture in Courtrooms and Classrooms*, Introduction, (Toronto: University of Toronto Press, 1998), 17.

A major contribution of feminist theory as applied to law is in critiquing this notion of value-neutral objectivity. Processes and decisions made in the courtroom and the laws being applied are not value neutral and objective but are rather part of the social and cultural context in which they exist. Authors like Carol Gilligan and Catharine MacKinnon have contributed to conversations about the norms assumed in universal notions of justice, arguing that the neutral legal subject is first and foremost male.<sup>50</sup> Many scholars have worked specifically with cases of sexual assault to demonstrate how certain kinds of victims and certain kinds of perpetrators are constructed as legitimate or illegitimate, believable or unbelievable, with a baseline directed by norms of patriarchal heterosexual masculinity.<sup>51</sup> Some adhere to the existence of a mythology in which 'real rape' involves a sober, and modestly dressed woman being attacked by a stranger, being penetrated, being otherwise severely injured, and reporting the attack to the police immediately.<sup>52</sup> This mythology of 'real rape', which only very rarely if ever occurs in reality, is then the normative referent against which all other instances of reported rape are judged. Stressed in the legal critique in such perspectives is the extent to which all parties are constructed as autonomous and freely choosing subjects, regardless of the gendered power relations involved.

There are most definitely parallels to be drawn from this genre of legal scholarship in identifying how the acts of resistance on the part of the complainant are read as "ineffective and weak" and thus often assumed to be indicative of

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<sup>50</sup> See: Gilligan, *In a Different Voice*.; MacKinnon, "Feminism, Marxism, Method, and the State."

<sup>51</sup> Matoesian, "'You Were Interested in Him as a Person?'" 56; Smart, *Feminism and the Power of Law*, 26–49.

<sup>52</sup> Bohner et al., "Rape Myth Acceptance: Cognitive, Affective and Behavioural Effects of Beliefs That Blame the Victim and Exonerate the Perpetrator"; Brown and Horvath, "Do You Believe Her and Is It Real Rape?"; Ehrlich, *Representing Rape*, 19–22; Estrich, *Real Rape*, 10.

consent, as well how her assumed status as a freely choosing subject has the effect of naturalising a construction of events “that represents the complainant as having made bad choices in the context of unlimited options.”<sup>53</sup> However, to limit the analysis to such constructions would not do justice to the capabilities of an analysis rooted in interlocking systems of domination. Failing to see the interlocking systems of domination - in this case, race, gender and space - would provide an incomplete reckoning of what went on in the trials and how the trials are linked to the broader settler colonial context.

Razack offers that where culture talk occurs it is oftentimes “the dominant group that controls the interpretation of what it means to take culture into account.”<sup>54</sup> In this thesis, the location is the courtroom and identifying the ‘dominant group’ is more complicated and challenging than simply exposing a legal conception of the male subject as the universal legal norm. Returning to the idea of difference being constructed as something that resides *in* the other, what it means for the dominant group to exert control over how culture is taken into account similarly reconstructs culture as the source point for difference. Abstracted from the larger settler colonial context that would otherwise demand an interrogation of what is believed to be normal and neutral in the courtroom, the culture deemed inferior in the settler colonial logic becomes the *cause* of or the *real* culprit behind what happened. Smith notes that “historically, white colonisers who raped Indian women claimed that the real rapists were Indian men. Today, white men who rape and murder Indian women often make this same claim.”<sup>55</sup> In order to elucidate how this occurs before moving

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<sup>53</sup> Ehrlich, *Representing Rape*, 76, 92 and 93; see also: Matoesian, ““You Were Interested in Him as a Person?” 60.

<sup>54</sup> Razack, *Looking White People in the Eye*, 59.

<sup>55</sup> Smith, *Conquest*, 26.

on to the analysis in the chapters that follow, I will briefly explore how the success of such a claim functions in tandem with an ahistorical account of Indigenous culture as other.

## Locating Difference

At the beginning of the preceding section I said it was important to note the degree to which all Indigenous people are often deemed culturally inferior and noted there are repercussions for how sexual violence perpetrated against Indigenous women is constructed because of this. Earlier, I also discussed the image of the squaw. The squaw is specifically a “lewd and licentious” female manifestation of Indigeneity with particular consequences in relation to settler masculinity, but all Indigenous people have been historically subjected to stereotypes of sexual perversion due to their supposed ‘primitive’ nature.<sup>56</sup> Speaking in 1948, a principal of a residential school in Saskatchewan said “the behaviour patterns of primitive people in respect to sex are unfortunately too predictable,” and “nature is very strong in them...the problem of course is that these people with regard to sex mature much earlier than whites.”<sup>57</sup>

Residential schools were part of the aggressive federal plan to ‘civilise’ Indigenous people through a strategy that sought to “kill the Indian, save the man,” as famously said in the United States by Richard Henry Pratt. Indigenous parents were separated from their impressionable children who were placed far away

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<sup>56</sup> Carter, “Categories and Terrains of Exclusions: Constructing the ‘Indian Woman’ in the Early Settlement Era in Western Canada,” 147.

<sup>57</sup> qtd. in Milloy, 296.

residential schools.<sup>58</sup> The objective of these schools, as articulated by then Deputy Superintendant General Duncan Campbell Scott in Canada was “to continue until there is not a single Indian in Canada that has not been absorbed into the body politic and there is no Indian question, and no Indian Department.”<sup>59</sup> Minister of Indian Affairs, Frank Oliver, said in 1908 that education “would elevate the Indian from his condition of savagery,” and, continues Duncan Campbell Scott, eradicate that “most complicated Indian problem.”<sup>60</sup>

The comments made by the principal of the Saskatchewan residential school about the heightened sexual nature of his students is especially alarming with what has come to light in more recent years regarding “the pervasive sexual abuse of the children” perpetrated by members of the administration in residential schools.<sup>61</sup> Milloy references a 1990 *Globe and Mail* article that reports Rix Rogers, the Special Advisor to the Minister of National Health and Welfare on Child Abuse, telling a meeting of the Canadian Psychological Association that the sexual abuse reported was “just the tip of the ice-berg” and “closer scrutiny of past treatment of native children at Indian residential schools would show 100 per cent of children at some schools were sexually abused.”<sup>62</sup>

The schools were funded by the Government of Canada and administered by Catholic, Anglican, United, Methodist and Presbyterian churches across the

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<sup>58</sup> For more see: Ward Churchill, *Kill the Indian, Save the Man: the Genocidal Impact of American Indian Residential Schools*, (San Francisco: City Lights Publishing, 2004).

<sup>59</sup> qtd. in John F. Leslie, “The Indian Act: an Historical Perspective,” *Canadian Parliamentary Review*, Summer 2002, 25. Available online:< [http://www2.parl.gc.ca/sites/lop/infoparl/25/2/25n2\\_02e\\_Leslie.pdf](http://www2.parl.gc.ca/sites/lop/infoparl/25/2/25n2_02e_Leslie.pdf)>.

<sup>60</sup> qtd. in John S. Milloy, *A National Crime: the Canadian Government and Residential School System 1879-1986*, (Winnipeg: University of Manitoba Press, 1999), 3.

<sup>61</sup> Milloy, *A National Crime*, 296.

<sup>62</sup> qtd. in Milloy, 298.



country.<sup>63</sup> The schools were in operation from 1857. The last federally funded school to close was Gordon Residential School, located just north-east of the city of Regina. It closed as recently as 1996. Also in 1996, the *Royal Commission on Aboriginal Peoples* said the following about the residential school system:

The survivors of the Indian residential school system have, in many cases, continued to have their lives shaped by the experiences in these schools. Persons who attended these schools continue to struggle with their identity after years of being taught to hate themselves and their culture. The residential school led to a disruption in the transference of parenting skills from one generation to the next. Without these skills, many survivors had had difficulties in raising their own children. In residential schools they learned that adults often exert power and control through abuse. The lessons learned in childhood are often repeated in adulthood with the result that many survivors of the residential school system often inflict abuse on their own children.<sup>64</sup>

In addition to the gross abuse perpetrated by the administrators of the schools, historian Ian Mosby uncovered federal government documentation that shows Indigenous children in several residential schools and some adult members of reserve communities were unknowingly used as test subjects for nutrition researchers between 1942 and 1952.<sup>65</sup> Many scholars had previously noted that food shortages, inedible food, and hunger were frequently reoccurring themes in accounts of residential school survivors, which was already believed to play a role in the high mortality rate in residential schools.<sup>66</sup> Mosby's article affirms that the test subjects, who were mostly children, were deliberately starved with the intention of measuring the effectivity of fortifying foods with vitamins and minerals. They were then

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<sup>63</sup> Canada, "Residential Schools."

<sup>64</sup> "Report - Royal Commission on Aboriginal Peoples - Indian and Northern Affairs Canada," 379.

<sup>65</sup> Mosby, "Administering Colonial Science," 148.

<sup>66</sup> Kelm, "'A Scandalous Procession': Residential Schooling and the Re/formation of Aboriginal Bodies, 1900-1950"; Miller, *Shingwauk's Vision a History of Native Residential Schools*; Shewell, *Enough to Keep Them Alive*.

frequently required to undergo dental and medical examinations, as well as intelligence and aptitude tests.<sup>67</sup> Children were routinely denied dental care so that nutritional effects could be objectively measured in their gum health without the intervention of oral hygiene.<sup>68</sup>

The trauma of generations of physical, emotional, medical and sexual abuse has had long term impacts on the health and well being of Indigenous people in Canada. In the domain of culture talk, where difference comes to reside in the other and a critical eye is never turned on the self, coping mechanisms such as substance abuse and the behaviours learned from a legacy of violence and abuse perpetrated by settler colonialism becomes a naturalised part of what is learned *about* the culture of Indigenous people. Culture, as an ahistoricised and apoliticised concept that denotes fixed values and beliefs continues the logic of Indigenous people as culturally inferior; prone to substance abuse, prone to violence, prone to criminal behaviour, prone to having unstable family structures, et cetera. Indigenous culture is marred by association with social degeneracy that serves to obscure the reality that all those deeply troubling aspects associated with Indigeneity are rather the effects of colonialism in which the settler population is implicated. Instead, difference is located as something intrinsic to the space of Indigenous people and Indigenous bodies.

With this reflex of associating Indigeneity with social degeneracy firmly ingrained as a thought pattern that allows the culture of dominant white settler society to remain unquestioned, Razack warns of the risks associated with bringing attention to instances of sexual violence within Indigenous communities. With

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<sup>67</sup> Mosby, "Administering Colonial Science," 161.

<sup>68</sup> Ibid., 163.

reference to all groups outside the perimeters of dominant white settler society, she says:

...when we bring sexual violence to the attention of white society we always risk exacerbating the racism directed at both men and women in our communities. In this way, we risk being viewed by our own communities as traitors and by white society as women who have abandoned our communities because they are so patriarchal.<sup>69</sup>

Indigenous women are written as victims of their own communities, and of their own Indigeneity. Through this reworking, the *real* perpetrators are Indigenous men. This extends to cases, such as the trials of *R v Edmondson* and *R v Brown and Kindrat*, even though there are no Indigenous men on trial, as will be demonstrated in the analysis portion of this thesis. The distraction of constructing “the Indian man as the ‘true’ rapist,” Smith says, “serves to obscure who has the real power in this racist and patriarchal society.”<sup>70</sup>

Drawing associations with culture provides a stand in for the term race, which Razack says makes for a racism that is only “distinguished from its nineteenth century counterpart by the vigour with which it is consistently denied.”<sup>71</sup> The wilful blindness to racism by locating difference with the other through culture talk allows for dominant settler society to conveniently forget our racist history. It also shifts responsibility onto Indigenous people for their own circumstances through a belief that those circumstances are the by-product of their own culture, irrespective of white settler society. With this framework as the theoretical and methodological basis for analysing the trials *R v Edmondson* and *R v Brown and Kindrat*, questions of who has

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<sup>69</sup> Razack, *Looking White People in the Eye*, 58–59.

<sup>70</sup> Smith, *Conquest*, 27.

<sup>71</sup> Razack, *Looking White People in the Eye*, 60.

the real power, how that power connects to the broader social context of settler colonialism and what that power looks like will all be brought to the surface. The next section will now go on to assess the practicalities of how I went about conducting the analysis.

### **C. Strategy for Interpretation**

The introduction to this thesis has already provided an account of how I came to the research questions, including the personal elements involved in selecting the set of trials pertaining to the Tisdale case as a means of grappling with the research questions I posed. I provided a brief and more concisely framed context for the research questions in the area of study. This section will provide an account of the case study method as it applies to the kind of research questions I have chosen. I will also explain choices around data collection, what documents were analysed for the purposes of the research, how they were accessed, and how I organised them for analysis. I will also describe how, with the assistance of NVivo data analysis software, I undertook a thematic analysis of the documents.

#### **Case study as research design**

Depth is paramount to the case study research design. According to Robert Yin, the case study design emanates from “the desire to derive a(n) (up-)close or otherwise in-depth understanding of a single or small number of ‘cases,’ set in their real-world contexts.”<sup>72</sup> The depth of analysis of a given case is intended to reflect back, providing insight on the real-world context in which it exists. The case study design

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<sup>72</sup> Yin, *Applications of case study research*, 4.

differs from many other social science research practices in which a given phenomenon is intended to be removed from the effects of its context so as to observe it more clearly.<sup>73</sup> By contrast, context is critical to the case study design. While there are multiple ways of assessing when the case study design is best applied, my orientation is influenced primarily by Yin. Yin proposes the case study design is most appropriately applied in a situation where the researcher is posing 'how' and 'why' questions, as I do in this thesis.<sup>74</sup> To this end, the contribution of the case study design is primarily theoretical in providing insight and explanation for a given phenomenon. In selecting a case, Yin posits that it is best when the boundaries between the case and the context in which it occurs are not immediately evident.<sup>75</sup>

In this thesis, I am seeking insight into the phenomenon that I have described as the disparity between Indigenous and settler populations. The preceding chapter that discussed the place of the West in Canada as well as the development of the relationship between Indigenous and settler populations from the mid-nineteenth century onwards provided a long range context for making sense of this disparity. In order to gain further insight into how this broad context is manifested at present, I have selected a contemporary case. It is a case that is best understood when read through the historical context of the West as the frontier in a settler-colonial society. To this extent, the boundaries between the context in which the case occurred and the case itself are inextricable. In this instance, the 'case' is a legal case, colloquially referred to as 'the Tisdale case'. That the trials *R v Edmondson* and *R v Brown and*

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<sup>73</sup> Harding, *Qualitative Data Analysis from Start to Finish*, 16.

<sup>74</sup> Yin, *Case Study Research*, 4.

<sup>75</sup> Yin, *Applications of case study research*, 4; Yin, *Case Study Research*, 18.

*Kindrat* form the basis of my analysis has already been mentioned, but how I chose these trials, what data I collected about them, and how I did the analysis will now be more fully explored.

## The waiting game: Data collection

Once I had settled on the Tisdale case being the ideal case study through which to explore my research questions, I had to make some decisions regarding what kind of data I would need about the case. I was already aware of most of the media surrounding the trial, and also familiar with two masters theses that both provided in-depth analysis of how the complainant had been portrayed in the media. Both Natalie Kallio's 2006 thesis and Bridget Kathryn Keating's 2008 thesis looked at how the complainant had been constructed in the media reports. They each had their own unique lens through which they wrote about the assault as one of racialised gender violence, both drawing attention to the lack of voice, agency and credibility given to the complainant in the reporting. Keating's thesis pointed to the "textual photograph" of the complainant created in the absence of her identity being known due to the court-ordered publication ban on her name because of her age at the time of the assault.<sup>76</sup> Kallio's thesis focused on rape myths, and the overtly sexualised construction of the complainant.<sup>77</sup> Aside from the fact that media reports pertaining to the trial had already been well researched and critiqued in these two masters theses, I wanted to be another step closer to the trial itself in order to make the best use of it for answering my research questions. I wanted to look for the complainant's presence in the trial, and I wanted to understand the context in which both she and

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<sup>76</sup> Keating, *Raping Pocahontas*.

<sup>77</sup> Kallio, "Aboriginality & Sexualised Violence."

the accused were made sense of within the trials themselves, without the intermediary step of 'the facts' having been filtered through the media. In seeking the depth required for the proper execution of the case study as a research design, I began the process of looking into getting the transcripts from Saskatchewan Justice.

I knew someone who worked for Saskatchewan Justice and I asked them about accessing trial transcripts. I was cautioned that transcripts are only produced for trials where there is an appeal and are not necessarily retained indefinitely. I was also warned that it could potentially be quite expensive to reproduce a set of transcripts for study. From the media reports I knew the trials had been appealed, and so my contact put me in touch with someone they knew in the Court of Appeals. The Court of Appeals Registrar confirmed that a hard copy of the trial transcripts did still exist. From there, I was forwarded on to Transcript Services who priced the copying of the transcripts at \$1,127.71 in Canadian currency, plus a 7% government sales tax and shipping costs. Funding to copy and ship the transcripts was provided by the Centre of Canadian Studies Library Fund. Staff in Acquisitions at the University of Edinburgh Library arranged the particulars of payment and shipping with Saskatchewan Justice.

All together, it was eight months from the point of confirming that the transcripts were available to be copied, and my receiving them. There were several issues in the process of arranging payment and shipment, the details of which I was not privy to. Through the funding arrangement, which is explored in more depth below in the ethics section, the Acquisitions Department at the University of Edinburgh Library was the 'client' with which Saskatchewan Justice was in conversation. While parties on both sides of the transaction were extremely helpful

to me personally, they both communicated to me that there was a gap in the conversation they were having with one another that resulted in an unexpectedly lengthy wait time for the transcripts.

## Making decisions about interpretation

I used the wait time as best I could to create a plan of action for when the transcripts did finally arrive. I had thought initially that I would do a discourse analysis of the trials focussing on specific elements of conversation. From reading other scholarly work that analysed legal transcripts from sexual assault trials, I was anticipating honing in on the back and forth of specific pieces of dialogue, the grammar and syntax of which would subtly reveal patterns of domination and privilege.<sup>78</sup> However, this changed during the eight month waiting period. During those eight months, I tried to sensitise myself to what the trials might contain by scouring databases and news websites for any media reports pertaining to the trials that I may not have already seen. I also acquired the factum prepared by the Native Women's Association of Canada (NWAC), who was given intervener status in advance of the 2005 appeal decision on *R v Edmondson*.<sup>79</sup> In addition, I had access to the judge's sentence in *R v Edmondson* from the CanLii database.<sup>80</sup>

From this initial sensitisation to both the content of the trial transcripts and also the language of law, I identified a few recurring topics emerging from the documents. In no particular order, I named these topics as follows: intoxication, background, community and age. In the judge's sentence, intoxication was the cause

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<sup>78</sup> Matoesian, "'You Were Interested in Him as a Person?"; Ehrlich, *Representing Rape*.

<sup>79</sup> *R. v. Edmondson*, 140 (SKCA 2004).

<sup>80</sup> *R. v. Edmondson* (C 2003).



of the poor behaviour of everyone involved on the night in question – Melanie included. Intoxication includes every mention of alcohol consumption. Background refers to what is discussed as Melanie's personal context. Community is named as distinct from background. The two topics are akin to each other, inasmuch as both are a reference to the personal contexts of the accused and the complainant. However, while background signals description about Melanie as a person, community was itself a recurring term that signalled where the accused were from but was lacking in any explicit description. Naming 'community' as a topic was a reflection of the more or less quantitative exercise of assessing the frequency with which the word itself appeared in judge's sentence (which was twelve times in twenty five pages). Age as an emerging topic covered the judge's confidence that the accused held a mistaken belief that Melanie was in fact older than twelve at the time of the assault, and also the review of expert testimony in which a doctor describes Melanie's physical body as having achieved puberty and thus older looking than her stated age of twelve.

I noted first from the judge's sentence, and the NWAC factum that deals almost exclusively with assessing the judge's sentence, how absent the accused were (most notably Edmondson, given that it was his sentencing) and how much I learned about the complainant. That is evidenced by the descriptive nature of background, versus the unarticulated frequency of community. What was also apparent, and surprising, was the lack of subtlety in the judge's sentence. I expected more to be hidden under webs of legal jargon that would require unravelling the step-by-step logic of isolated pieces of text in search for meaning and motivation. While there certainly were parts of the legal conversation that were difficult to follow - especially

pertaining to the application of Edmondson being sentenced as someone *party* to sexual assault when no one else had been convicted as the person with whom Edmondson was *party to* - for the most part the judge spoke surprisingly plainly.<sup>81</sup> He was very matter-of-fact about why he was making the decisions about sentencing that he was making. He minced no words in explaining that who the complainant was and what her background was, in contrast to the community Edmondson was from, had a lot to do with his decision.

This caused me to take pause, and consider whether the close discourse analysis I had been planning would really be the best approach. I wondered what stories had been told in the trial that resulted in the judge being able to state with such clarity and confidence, as though it were a series of simple facts, that Melanie's background had so much to do with her victimisation. On the other hand, not much needed to be said about the person being sentenced. It was as though there was nothing problematic of note that required any description of him or justification in his sentencing. I thought back to the previous masters theses that focused on how the complainant had been constructed, and wondered how I could analytically access the parts of the story that were less explicit; those parts of the story that were unremarkable for the judge to summarise in sentencing, unremarkable for NWAC to take issue with, and unremarkable for the media to report on. What was assumed to be the case about Edmondson? What did not need to be said, so that the vast majority of Edmondson's sentencing was spent discussing the complainant? If the judge had had to be as explicit about the community Edmondson was from as he was about Melanie's background, what would he have said?

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<sup>81</sup> To be fair to myself as the researcher, part of the confusion about this was because the judge, the defence lawyer and the Crown were also confused.

Practicing openness to such questions gave me a better chance of being able to reflect on what stories were being tapped into, and what broader and more complicated dynamics of oppression and privilege they revealed. I suspected what I was looking for would not be hidden in the minutia of grammar and syntax in talk, but rather in threads of stories giving shape to the conversation. I changed my plan for analysis from one that would narrow in on assessing what was present in specific, key pieces of dialogue, to a plan that would take a step back. I wanted to see the multitude of stories surfacing in the trials, whether contradictory or complimentary, as they played out. Less concerned with the details of talk, I wanted to identify what themes stretched across the transcripts, and how those themes reached back out into the gendered, racial and spatial context in which the trials were taking place. A more broadly designed thematic analysis, I concluded, would serve the purpose of my research better than a close discourse analysis focussing on the dynamics of dialogue between lawyer and witness. Before describing the particulars of how I applied a thematic analysis I will explain first how I prepared the transcripts for analysis and how I conceptualised the data.

## Digitising the transcripts

I received the transcripts in the spring of 2010. The transcripts that were sent included the trials of *R v Edmondson* and *R v Brown and Kindrat*, as well as the two more recent re-trials of Kindrat and Brown that happened separately in 2007 and 2008 respectively. All together, there are roughly 4,000 pages of text. In order to manage this high volume of data I wanted to digitise the transcripts. This became necessary for a few reasons, including ease of organising the data for thematic

analysis, but also because of the previously mentioned stipulation that the library owned the transcripts through the funding agreement. The transcripts were held behind the front desk at the University of Edinburgh Main Library. I was only able to take a certain number of volumes out from the library at any given time, and I was also not able to make any notes or markings in them. These stipulations restricted my ability to carry out my analysis manually.

There was some discussion about the library having the means to scan the transcripts and format them as searchable Word or pdf documents, but there was a hiccup with their agreement to do this because of an issue I raised regarding anonymity. I will come back to the issue of anonymity in the reflexivity section below, but for the moment it will suffice to say that concerns about anonymity meant the library was reluctant about digitisation. Similarly, for the very same reasons, I was also reluctant to take the transcripts to any private company to digitise them for me. There had already been an unexpectedly long wait for the transcripts to arrive and so time was of the essence. I set about planning to digitise the transcripts myself.

I managed to borrow a scanner from a friend's workplace. I then needed to find the appropriate software that would scan the transcripts as searchable documents rather than image files. Such software is prohibitively expensive and I ended up spending a lot of time experimenting with different free downloaded versions and trial versions with little success. Eventually, through a friend of a friend, I had access to Scan Soft Omnipage Ultimate software that allowed me to scan the documents in as text files. Over the course of several weeks, I scanned all the documents. I paged through each one, comparing the scanned copies to the paper

copies as I went along to make sure the word recognition software was getting everything right. I formatted all the documents as Word files to later upload into NVivo (which is computer software for conducting qualitative data analysis) for coding purposes. Thankfully, NVivo software is supported by the University and thus free for student use. Once scanned, I used the 'find and replace' function in Word to change the names that were the subject of issue with anonymity before saving each file. In the time it took to get the transcripts into NVivo - all through the conversations about anonymisation and digitisation - I read through the transcripts in their entirety twice. As such, the first part of my analysis of the trials took place before I had the transcripts in NVivo.

## Conceptualising the data

As previously noted, Saskatchewan Justice sent transcripts for four trials: *R v Edmondson*, *R v Brown and Kindrat*, *R v Kindrat* and *R v Brown*. The first two trials took place in 2003 and the latter two were re-trials of *R v Brown and Kindrat* that took place in 2007 and 2008, respectively. I read the transcripts for all four trials in full on two occasions before focussing in more specifically on the 2003 trials, *R v Edmondson* and *R v Brown and Kindrat*, for the purpose of this thesis. *R v Kindrat* in 2007 and *R v Brown* in 2008 were the result of the decision in *R v Brown and Kindrat* being overturned by the Court of Appeals. The 2003 decision was overturned because it was found the jury were incorrectly directed by the judge on the issue of age of consent.

Compared to the 2003 trials, the latter trials were much more heavily laden with procedural conversation about what could and could not be said and how the

jury ought to be directed. While there is plenty to be written about applications of the law and courtroom procedure across the trials, I do not take issue with that here.<sup>82</sup> It is both beyond the scope of my expertise and further, it is extraneous to the research questions posed. The legal system, as explored above in the methodology, is part of the broader context that I am looking at, rather than something being assessed on its own terms. Whether or not the law was interpreted or applied correctly is outside the scope of this thesis, which seeks to contribute to a conversation about the broader social and historical context that the legal system is also a part of.

The 2007 and 2008 trials read as compressed and less detailed versions of the 2003 trial with an additional distinct focus on adhering to procedure. As such, I spend the majority of the time focussing on the 2003 trials, *R v Edmondson* and *R v Brown and Kindrat*. Below, in the section that details the process of coding, grouping and thematically organising the data, it will be clear that the later trials disappear past the cursory stages of analysis. Their place in the body of the thesis is similar to that of the media reports that framed my initial awareness of the case: they provide background information and are sometimes referred to for the sake of context. However, they are not the main analytic focus of this thesis. The two 2003 trials, *R v Edmondson* and *R v Brown and Kindrat*, are my main analytic focus.

## Limitations of the data

I also had to come to grips with the limitations of the transcripts. The transcripts do not include transcribed versions of videotaped statements given by the accused, nor

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<sup>82</sup> For an assessment of the legal procedure, see: Vandervort, "Legal Subversion of the Criminal Justice Process? Judicial, Prosecutorial, and Police Discretion in Edmondson, Kindrat, and Brown."

do they include the preliminary hearings which are frequently referred back to. Additionally, it was not possible to retain the audio recordings from the trials. As transcribed, the data does not reflect pauses in speech or give any indications about intonation. I had to rely on the people in the courtroom to make mention of the demeanour of a witness, or the amount of time passing, to get a deeper sense of the emotion of a witness. Media reports suggested, for example, that Melanie had cried during her testimony and that she took several long pauses. Such descriptions are not evident in the transcript unless someone speaks it into the court record. The transcript of Melanie's testimony simply reads as though she sometimes did not answer, and the Crown or the defence were repeating their questions until she said something. How long they waited for her to respond before asking again, or where the long pauses were, or what was happening while no one was speaking, is inaccessible to me.

Further, the transcripts were prepared by several different stenographers. There were minor differences in style from one document to another, but one very notable and potentially important difference is with reference to the use of 'Ms' and 'Miss' when referring to Melanie. Melanie is referred to by the judge as 'Miss Campbell' quite consistently in the first trial. This is replaced periodically by referring to her as 'Ms Campbell'. The frequency with which she is referred to as 'Ms Campbell' increases as times passes through the trials, with volumes referring to her entirely as 'Miss' and others entirely as 'Ms'. Referring to a then fourteen year old as 'Ms' gives the complainant an air of self-assuredness, as a title generally used by women rebuffing their title as defined by their marital status as either 'Miss' or 'Mrs'. While it is interesting, and potentially of note, I cannot draw any concrete

conclusions from this because it might not reflect a change in the judge's orientation to Melanie – it might simply be down to inconsistency among stenographers.

## Thematic analysis

In terms of a method for analysis, 'thematic analysis' can describe a multitude of different ways of approaching textual data. The boundaries of thematic analysis are not as clearly defined as other methods of analysing text such as narrative analysis, content analysis, or discourse analysis.<sup>83</sup> Authors Braun and Clarke define thematic analysis as a method of "identifying, analysing and reporting patterns (themes) within data."<sup>84</sup> Such a definition is very much open to interpretation. Other social science researchers have criticised thematic analysis as resulting in mostly descriptive accounts of textual data that do not draw enough examples from the data source to substantiate the themes being proposed by the researcher.<sup>85</sup> There is a risk that the researcher might skim the data and pull initial impressions off the top as *themes* without immersing themselves in the bigger picture. Key to the thematic method of analysis proposed by Braun and Clarke is, thus, the researcher's deep immersion within the textual data.

One of the ways I sought to mitigate the possibility of pulling themes from the surface of the data without immersing myself in the data was through multiple levels and stages of coding. I drew inspiration from other methodological sources such as Jonathan Saldana's instructive *Coding Manual* and Rossman and Rallis'

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<sup>83</sup> Braun and Clarke, "Using Thematic Analysis in Psychology"; Saldana, *The Coding Manual for Qualitative Researchers*; Vaismoradi, Turunen, and Bondas, "Content Analysis and Thematic Analysis"; Bazeley, *Qualitative Data Analysis*.

<sup>84</sup> Braun and Clarke, "Using Thematic Analysis in Psychology," 79.

<sup>85</sup> Bazeley, *Qualitative Data Analysis*, 191; Saldana, *The Coding Manual for Qualitative Researchers*, 13.



classic *Learning in the Field*.<sup>86</sup> Both authors differentiate between a category or code and a theme. Saldana notes that “several qualitative research texts recommend that you initially ‘code for themes’,” which is, he asserts, “misleading advice.”<sup>87</sup> A theme, he says, is “the *outcome* of coding, categorisation, and analytic reflection, not something that is, in itself, coded.”<sup>88</sup> Rossman and Rallis provide a clear definition of the difference between the initial codes or categories pulled from the text saying “think of a category as a word or phrase describing some segment of your data that is explicit, whereas a theme is a phrase or sentence describing more subtle and tacit processes.”<sup>89</sup> Following this line of logic in applying a thematic analysis, I first coded the data in, and then grouped the codes together into smaller categories. From the categories, I developed themes that form the basis of my analysis.

## Coding and categorising the data

The first time I read through the transcripts in full was as soon as they arrived. In the first instance, I borrowed the transcripts from behind the front desk at the library in chronological fashion because it seemed like the easiest way to keep track of what I had and had not read. The roughly 4,000 pages of data were organised into twenty four volumes, with each volume containing anywhere from 27 to 733 pages. Reading them chronologically also gave me a sense of the timeline of events as well as context for seeing links between points raised earlier in the trials that would resurface later. This was especially the case between *R v Edmondson* and *R v Brown*

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<sup>86</sup> Rossman and Rallis, *Learning in the Field*; Saldaña, *The Coding Manual for Qualitative Researchers*.

<sup>87</sup> Saldaña, *The Coding Manual for Qualitative Researchers*, 13.

<sup>88</sup> Ibid. (emphasis original).

<sup>89</sup> Rossman and Rallis, *Learning in the Field*, 282.

and *Kindrat* where one judge, Justice Kovach, presided over both trials and representatives for the Crown stayed the same. The defence lawyers for all of the accused were also frequently in the courtroom, regardless of whether or not it was their client's trial. *R v Edmondson* happened first, at the end of May 2003, and *R v Brown and Kindrat* happened a month later in June 2003. While they are meant to be two distinct, separate trials, there is a clear memory from *R v Edmondson* that carries forward into *R v Brown and Kindrat*.

It was with my first reading of the trial transcripts in hard copy that I did my initial phase of coding. In this initial phase I did what is called "attribute coding" or "setting/context" coding."<sup>90</sup> This level of coding includes only "basic descriptive information."<sup>91</sup> Aside from reading other academic works that make use of trial transcripts, such as the previously mentioned Matoesian article and Susan Ehrlich's *Representing Rape*, this was the first time I had ever seen trial transcripts.<sup>92</sup> As a lay person when it comes to matters of the law, it took some time to sort out what the procedures being referenced were. I had to look up what a *voir dire* was, for example. I also had to get a sense of what the preliminary hearings were, and also make sure I understood what the accused had been charged with, cross referenced with the *Criminal Code of Canada*. I also spent a lot of time looking up trials referenced by the defence and the Crown as precedents, so as to get a sense for the logic of their arguments.

At this early stage, I needed to get a sense of who everyone in the trial was and what their roles were. I also needed a clear understanding of the timeline of

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<sup>90</sup> Bogdan and Biklen, *Qualitative Research for Education*, 174; Saldaña, *The Coding Manual for Qualitative Researchers*, 55.

<sup>91</sup> Saldaña, *The Coding Manual for Qualitative Researchers*, 55.

<sup>92</sup> Ehrlich, *Representing Rape*; Matoesian, "'You Were Interested in Him as a Person?'".

events. Given that the transcripts had not yet been digitised, the coding involved at this early descriptive stage was done by pen and paper. I made calendars for the spring months of 2003 and coloured in the days of each trial on the calendars. I made lists of all the exhibits filed in each case. I drew a timeline of events with an accompanying Google Maps print out of when and where the accused picked up Melanie, where they went with her, and where they dropped her off. I made lists of all the witnesses called in each trial and made notes next to their names as to who they were and why they were called to testify. There were, in particular, a lot of RCMP officers to account for. I had separate note cards for each of them posted to a bulletin board so that as I read through I could write down what their involvement was and with whom. For example, Constable Degruchy's note card reads "attended to Melanie at the hospital/helped doctor with sexual assault kit/interviewed Brown/picked up Paul Campbell's cigarette butt/told Melanie it was her father's DNA on her underwear/interviewed Melanie about abuse at home."

Having this basic level of attribute coding helped me familiarise myself with the bigger story and what the individuals' relationships were to each other within that story. During her testimony later on in *R v Edmondson*, for instance, Melanie expresses a particular dislike for Constable Degruchy. Counsel points out on several occasions that Melanie does not refer to Constable Degruchy by his title of 'Constable' instead referring to him only as 'Degruchy' (*R v Edmondson*, Cross-examination of Melanie Campbell: 12, 15, 25, 35). Melanie also tells her foster mother she thinks Degruchy is "stupid" (*R v Edmondson*, Cross-examination of Melanie Campbell: 79-81). Melanie is not asked to explain why she dislikes Constable Degruchy. Mentioning it is instead an aside in the conversation that

otherwise seems immaterial. However, a quick glance at Degruchy's level of involvement with her and her family as annotated by this cursory level of attribute coding puts her dislike in context.

The second time I read through all the transcripts in full, starting from *R v Edmondson* in 2003 through to *R v Brown* in 2008, it was again in chronological order. This time it was while I was digitising the transcripts and ensuring the electronic copies matched the paper copies. With a firm grasp of the sequence of events and players involved in the trial from the initial attribute coding, I returned to the topics that surfaced in reading the Judge's sentence in *R v Edmondson*: intoxication, background, community, and age. I branched out from these initial topics on the second reading of the transcripts and created a preliminary list of a handful of topics I could use to begin the coding once I was reading the documents in NVivo. This initial list was modest, keeping to less than ten codes.

Keeping to the most basic functions of NVivo, I input the few codes that were my starting point as free nodes. My coding process was iterative, moving back and forth through the transcripts adding new codes, reviewing existing codes and sometimes renaming codes as I went.<sup>93</sup> It was during this third time through the trials that the amount of repetition from *R v Brown and Kindrat* and the amount of procedural conversation involved in *R v Brown* and *R v Kindrat* was identified and I began to focus my attention more on the details of *R v Edmondson* and *R v Brown and Kindrat*. I had a list of forty one codes by the time I was through. I grouped the codes into smaller categories oriented from the micro level to the macro level. The first grouping was characteristics and behaviours associated with individuals; the

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<sup>93</sup> Mason, *Qualitative Researching*.

second was those individuals in the context of community, and; the third was the community in the context of the region.

### 'Theme-ing' the data and storytelling

In order *to theme* the data, I returned a fourth time to reading *R v Edmondson* and *R v Brown and Kindrat* all the way through, reflecting on the categories I had created from the multitude of codes. I followed Saldana's advice on "theme-ing" the data, by identifying three emergent concepts that stand out from the data and connect back to the broader social, historical and geographical place in which the trials had taken place.<sup>94</sup> Those concepts were normalisation, constructing the truth of what happened through the accounts of the accused, and othering. In order to expand these concepts into themes, Saldana suggests adding the word 'is' to the end in order to define the theme.

1. Normalisation is the process through which the accused are constructed as insiders and the violence of their actions are minimized.
2. Constructing the truth of what happened through the accounts of the accused is the process through which the behaviour of the accused is validated and they are constructed as innocent.
3. Othering is the process through which Melanie is constructed as an outsider and her version of events is disregarded.

These are the three themes that are threaded through the chapters of analysis. Normalisation, the construction of truth, and the process of othering are all embedded within the geographic location of the West, within Canada as a settler

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<sup>94</sup> Saldaña, *The Coding Manual for Qualitative Researchers*, 186.

colonial society. The analysis of what is normal, what is perceived as reasonably truthful, and what is other speaks to how privilege and oppression are manifested, and how they are connected to a bigger history. The theoretical concepts of race, gender and space are the basic building blocks through which these themes are understood.

The manner in which I engage these themes moves simultaneously horizontally across the transcripts and also vertically down into the transcripts. By which I mean to say that I speak about how certain things resurface across the trials, but I am in many ways also recounting the story of what happened as it played out through the trials in linear time. Coding the data made it easier to understand what codes, categories and themes were emerging and what could be substantiated with the data. It also provided a convenient means of accessing the data when writing up. However, I never removed myself from the linear story of the transcripts. In accessing any portion of coded text, I always returned to the place where that portion of text originated in the trial so that I could understand it in the context of what came before it and what came after.

The trial transcripts are themselves a recounting of a kind of story about what happened on 30<sup>th</sup> September 2001 and the fallout thereafter. The trial process focuses so much on who knew what about whom and when they knew it. The testimony of each individual witness adds to the understanding of the lawyers and the judge about what the story of the night in question was, and sometimes they then engage witnesses differently based on what they take to be 'known' or 'unknown' already. I found myself always returning to the linearity of the story to ensure I fully grasped the trajectory of logic that resulted in the end point of the trials. I am

explicit throughout the analysis about when I am talking broadly across the trials, and when I am recounting part of the linear story. Broadly speaking, however, like the trials create an ordered and selective recounting of what happened on the night of September 30<sup>th</sup>, so too do I create an ordered and selective recounting of what happened in the trials. In essence, I am re-telling a story about what happened through the methodological lens described in this chapter. Also part of the story is my own place in the research, and my reflexive ethical engagement with the research process.

#### **D. Reflexive Ethical Engagement**

*"All we sociologists have are stories. Some from other people, some from us, some from our interaction with others. What matters is to understand how and where the stories are produced, which stories they are and how we can put them to honest and intelligent use in theorising about social life."*<sup>95</sup>

My own story in relation to this research has already partially been taken up in terms of how I came to the research questions. I identified myself as a settler woman who grew up in the province where this trial happened. I also identified this trial as a key part of my learning about the place I was from. Critical to a feminist ethics of research, my story – and thus my position in relation to the research - does not exist confined to one section of the thesis but is rather present throughout.<sup>96</sup> It is part of the methodology I propose in this thesis that I be explicit about my position as a researcher. To return to Razack, she stresses the need for self-reflection in relation to the theoretical and methodological context I have applied here perfectly, saying "an interlocking analysis reminds us of the ease with which we slip into positions of

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<sup>95</sup> Silverman, *Qualitative Research*, 145.

<sup>96</sup> Stanley and Wise, "Method, Methodology and Epistemology in Feminist Research Processes"; Letherby, *Feminist Research in Theory and Practice*.

subordination . . . without seeing how this very subordinate location simultaneously reflects and upholds race and class privilege.”

How interlocking systems of domination function is important not only for an interpretation of the trials, but also in recognising myself in the dynamics of privilege and oppression in which I am implicated as a white woman who is part of the settler society in Saskatchewan. Razack says “we fail to realise that we cannot undo our own marginality without simultaneously undoing all systems of oppression.”<sup>97</sup> That is the ethic I wish to espouse throughout this thesis. My intention in this section with regards to an ethical engagement with the research process is to reflect on some of the ethical challenges I faced in doing the research, including the researcher-researched relationship and the emotion that was part of the research experience. I will begin with the difficulty I had in engaging with the formal ethical review process and how I have tried to manage the arising ethical issues through a reflexive engagement with the documents. My reflexive engagement with the documents has been one of the most challenging aspects of the research.

## Engaging with the formal ethical review process

In advance of beginning the research process I, like all members of the School of Social and Political Science conducting research, was required to fill out a Self-Audit Checklist for Level 1 Ethical Review. The questions posed on the form did not easily map onto my research project. My difficulty answering the questions and resolving the ethical dilemmas they highlighted meant that I had to consult a higher level of ethical review. Similar to the level 1 review, I had difficulty connecting my research

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<sup>97</sup> Razack, *Looking White People in the Eye*, 14.



project to the kinds of questions being asked and the way in which the form expected the ethical dilemmas to be resolved. The questions at all levels of ethical review are designed for social researchers going *into the field*, as it were. They are hard to engage with when a researcher's sole and primary source material is a set of documents that they had no hand in creating through any manner of 'fieldwork'. Such is the case with documents collected for this thesis.

The set of documents I accessed for research purposes, as has been mentioned already, are transcripts for four sets of trials that took place in the town of Melfort, Saskatchewan between 2003 and 2008. While my thesis focuses on the two trials that happened in 2003, *R v Edmondson* and *R v Brown and Kindrat*, I had copies of all four trials pertaining to the case. Decisions about the accessibility and presentation of the trial transcripts are made by Saskatchewan Justice. The court records for the trials are available to the public and so there were relatively few barriers in accessing them. My acquisition of the documents, the process of which was already described in greater detail above, only necessitated that I seek funding to have them reproduced and shipped to the University of Edinburgh, which is precisely what I did. The stipulation of the generous funding received from the Canadian Library Fund as administered by the Centre of Canadian Studies at the University of Edinburgh was that the trial transcripts become part of University's library collection once I completed my research. The funding makes the transcripts part of a larger project of maintaining a strong representation of Canadian content in the library. For the purpose of filling out the self-audit checklist for level 1 ethical review, I received funding to reproduce a series of publically held documents on the basis that their acquisition would benefit the university library, and the interest of having Canadian

content.

The Self-Audit Checklist contains seventeen questions focused on the researcher's safety and responsibility to their participants. If the researcher answers one or more questions affirmatively they are then required to move up to the next level of ethical review that requires external auditing. I struggled to answer questions such as "does the research involve sensitive topics, such as participants' sexual behaviour or illegal activities, their abuse or exploitation or their mental health?" My research does involve sensitive topics, but I have no 'participants', in the sense that I would be asking anyone to disclose or discuss any of these sensitive topics. In tentatively answering that yes, my research does involve sensitive topics I looked on to the next level of ethical review for further guidance. It required that the researcher have a clear strategy of engagement with their participants in order to mitigate harm. Questions that roughly apply to ethical issues in my research such as "will the research require the collection of personal information about individuals (including via other organisations such as schools or employers) without their consent," "will the true purpose of the research be concealed from the participants" and "will the data be made available for secondary use, without obtaining the consent of participants" all assume a relationship with a person or persons and an ideal of informed consent. For the purpose of completing the University ethics form to satisfaction, my relationship is with a publicly available set of documents. Having no 'participants' obfuscates the reality that there are still people involved.

While not 'participants' in my research, the transcripts for a set of trials involving a multiple perpetrator sexual assault includes a huge amount of personal information about real individuals whose lives were, in one way another, deeply

impacted by what is contained in the documents, not least of whom is the complainant. As a researcher, I received funding to pay Saskatchewan Justice to reproduce a set of documents that describe real people, their bodies, their trauma, their attempts to save face, their shame, their hurt, their anxiety, frustration and fear, in what was sometimes excruciating detail. I had collected personal information about individuals without their consent and that information would be available for secondary use via the funding agreement. I considered the possibility of getting in touch with people who were involved in the trial so that I would have some avenue by which to apply an ethics procedure involving informed consent. However, with the difficult and sensitive nature of the trial it seemed that would do more harm than good, and furthermore would in no way improve my ability to answer my research questions. I struggled with this a great deal.

## Anonymity

The difficulty I had in addressing these ethical issues were compounded when I actually had the documents in hand. As noted, before I had the full trial transcripts I had access to the judge's sentence in *R v. Edmondson*. I also had access to the factum prepared by the Native Women's Association of Canada (NWAC). In all those documents, as well as in all the media reports pertaining to the trial, the complainant was referred to as 'M.C.'. There is a specific statement at the top of the judge's decision in *R v. Edmondson* that reads "an order has been made in this case prohibiting publication of any information that could disclose the identity of the complainant pursuant to s. 486(3) of the *Criminal Code*."<sup>98</sup> It had never occurred to

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<sup>98</sup> *R. v. Edmondson*, 51 (SKCA 2005).

me that the complainant's name would not be similarly redacted to 'M.C.' in the transcripts. It was not.

Having done as much research in advance as I could during the lengthy wait for the transcripts to arrive from Saskatchewan, I thought I knew everyone who had testified in the trials. As I stood at the front desk of the library with the newly delivered transcripts, busily organising them by trial and volume number, it took me a few minutes to figure who this name belonged to in the title of one of the documents. I stared at "The Cross-examination of M\_\_\_\_\_ C\_\_\_\_," until the initials 'M.C.' stood out to me. I was angry that the transcripts were sent to me this way. I had assumed that I would never know her name, and this had given me some illusion that I would have some distance from the trial as well as a false sense of ethical due diligence that in a reproduction of the trial transcripts, so might M.C. be distant from the trial. I did not realise I was harbouring this illusion until it all came crashing down right then and there in a matter of moments.

It was not unlike the shock of being in a car accident and then through your shock trying to remember what you had been forced to repeat ad nauseam in driver training about what it is you are supposed to do next. I had just been sideswiped by an unexpected ethical conundrum and I was trying to access the part of my brain that had memorised rules of good research practice. Anonymity was the problem. They were supposed to be anonymous. I cannot remember precisely what words came out of my mouth, but I remember the sympathetic look on the librarian's face as I was pleading with him to immediately change the title of the volumes as they appeared in the library collection or otherwise remove them entirely. He tentatively agreed and asked what name it was I was concerned about. I hesitated, wondering if I could say

“all of them,” but instead I pointed to the name with the initials ‘M.C.’. He started to repeat the name out loud to me to clarify what I was pointing at, and I stopped him. He moved to write it down on another piece of paper to hand it off to someone with access to the data entry side of things and I felt like the whole situation was suddenly spiralling out of control. There was so much power in seeing the name of the young girl who survived this atrocious event, such that I was beside myself when I actually had a name to put to the story. With the support of my supervisors, the library did remove her name from the document titles and replaced it with the moniker ‘M.C.’ in its electronic listing. The transcripts are also not on the shelves for general access and are instead kept in a secure location behind the front desk.

With reference again to the lengthy wait for the transcripts and reading I did around the trials in the interim, I thought back to Bridget K. Keating’s 2008 masters thesis that does an in depth analysis of the media surrounding the trials using methods borrowed from literary theory. She argues that although there was an order of protection that prevented the publication of the complainant’s name, in absence of a name there was a “textual photograph” created in the media reports in which her identity was manifested as a sexually aggressive “debased ‘Indian Princess’” who was “responsible for the men’s downfall.”<sup>99</sup> While I, like Keating, was critical of the manner in which she was portrayed in the media, I was nonetheless using the trial in part because of how she was portrayed. What I was forced to interrogate when I was confronted with an actual name, was my anxiety that I was being instrumentalist in my approach. I questioned the ethics of ‘using’ this trial at all, and what cycle of victimisation I could be playing into by reproducing the documents for my own ends.

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<sup>99</sup> Keating, *Raping Pocahontas*.

I did not want to lose sight of the fact that the trial was real. It was not an experiment through which I, and others, could come to understand the intricacies of sexual assault trials in Canada, or how we talk about race, or age, or gender or any number of other things. It was a real event that happened to real people that had real repercussions.

I made some concrete decisions regarding my presentation of names and materials in order to reflect that ethic. I have not used the complainant's real name as it appears in the transcripts. Nor have I used the stand-in of her initials 'M.C.' as it seemed a step too far removed. I wanted it to be clear that everything described was happening to a real person, and not just a foggy entity known as 'M.C.'. Her voice and her version of events are routinely diminished in the courtroom and she is not dealt with kindly the vast majority of the time. It seemed inappropriate to deny her speaking voice an actual name, but then equally inappropriate to use her real name. I selected two common names as her surname and forename that bear no resemblance to her actual name save for the first letters. As has already come up, she is referred to throughout as Melanie Campbell. I also changed the names of anyone through whom she may be identified, such as her mother, her father, her uncle and her foster mother. Keeping with the surname Campbell, her relatives all have common and randomly chosen forenames. Everyone else in the trials, including the accused, the lawyers, the judge, all other witnesses who testify, are all identified by their names as they appear in the trial transcript.

## Knowledge, innocence and privilege

I made other, much less concrete decisions in an attempt to address the ethics of

using such an awful case to talk about the larger questions I wanted to address without being instrumentalist about it. They were not necessarily good decisions. I had been naive in my confidence that I would be able to manage the content of the transcripts without undue stress. The anger, the hurt, the fear and personal shame I felt while reading the transcripts has had a marked impact on my experience of doing a PhD. It changed my experience in ways I did not realise it would when I set myself on this course of research. Reading Melanie's name in relation to what I already knew from the research I had done while waiting for the transcripts was only the beginning. Everything was made that much more difficult having actually read the transcripts. While, like all PhD students, I was encouraged to speak in public forums about my project and seek publication opportunities, I resolutely did not. It was difficult to talk about my PhD without reference to the trial, and people were interested in hearing about the trial (as I was interested in researching it), and I felt uncomfortable talking about it.

I felt deeply protective over the contents of the transcripts and unnecessarily defensive over other people's portrayals of what they heard about the Tisdale case. In order to manage what I was reading, and continuously re-reading until every detail of the story was committed to memory, I withdrew. I involved myself in side projects and other work opportunities, avoiding any situation that would put me and the presentation of my work at the centre of anything. I experienced something new in that I found myself rendered speechless by the contents of the trials. I struggled deeply with how to represent the trials in speech, or in writing, without reproducing a dynamic in which I, as an educated white woman who has been granted a lot of opportunity and a lot of privilege through no intrinsic merit of my own, would be

speaking from a place of *knowing* about this trial. My external protectiveness and defensiveness about the trial extended to my internal self, too. I lost my voice and effectively paralysed myself from continuing on.

Of note in Razack's perspective is her focus on the concept of innocence. She says, "as long as we see ourselves as not implicated in relations of power, as innocent, we cannot begin to walk the path of social justice and to thread our way through the complexities of power relations."<sup>100</sup> The struggles I had, and continue to have, are about my innocence. Or more accurately, the struggle is with my lack of innocence. In the introduction I talked about how I came to the research questions based on what might be considered my liminal position in a decidedly white dominated society. While the moment of realising there was something more to the concern I had with being perceived as white represented a turning point in my own thinking, it marks only the starting point of a life long journey. I am under no illusion that from that moment, I was released to a place outside the relations of power from which I could see clearly and speak with abandon from a position of authority. Nor did I then cease existing in the same society and continuing to perform in accordance with its norms that are an enactment of my own privilege. While writing this thesis it was impossible for me not to see myself implicated in the power relations that dominate the story of the trials. The challenge has been to sit with my privilege, and to also sit with the hurt, and the shame, and the frustration and the fear that is working itself out in my own community, in my own family, in my own self, and on my own body. And to then finish the thesis instead of being subsumed by the weight of it all. The end product represents my attempt to thread

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<sup>100</sup> Razack, *Looking White People in the Eye*, 22.



my way through the complexities of power relations in which I am fully implicated so that, like Razack says, I can begin to walk a path of social justice.

## Strength and survival

One of the decisions I made early on was that I wanted to severely limit the amount of focus on how the complainant had been constructed. My intention was that in not drawing undue attention to her, I would reduce the harm I might possibly do otherwise. I do spend more time in this thesis writing about the accused than I do talking about Melanie because I locate the root of the problem with the settler society the accused are a part of. However, I changed my perspective on how I would approach the story about Melanie in the trials once I had taken some time to reflect about my own position in relation to the research. To not speak about what was done to her, and how she pushed back, would be to ignore a very important part of the story. I concluded that its omission would be harmful. If I were to omit that part of the story it would be because of my own fear and discomfort.

What happened to Melanie is not a story about her shame. It is a story about how the place and the people I call home failed to protect her. It is a story about her strength and about her survival. There is plenty of pity and plenty of sympathy for her situation in the trials, as will be demonstrated in the analysis. *What a shame* it all was, people said. The final thought with which I would like to leave the reader before moving into the analysis is that pity and sympathy do her no justice. In working my way through the complexities of the power relations within which I and these trials are implicated, I have done my best to reflect her strength and survival. Where I might have failed to do her part of the story justice, please do not fall prey to

pity. She survived what was done to her and this whole story is a testament to her strength. She, her family and her community, fought back, and continue to fight back, and she is still alive now.

## Chapter 4

### **'Fitting in' in Saskatchewan: Normalising the accused**

This chapter will set out how the accused 'fit in' in Saskatchewan. The methodology set the groundwork for understanding interlocking systems of domination in a settler colonial society as they manifest across lines of race, space and gender. In this chapter I demonstrate how the accused, and their actions on the 30th of September 2001, are normalised via reference to male social bonding practices that mark them as privileged in a white settler colonial society. Focussed on lines of race, space and gender, I point to normative heterosexual male bonding, intoxication and the place of the land as ways in which the accused enact their identities and come to know who they are in a settler colonial society. The privilege of their identities normalises their behaviour on the 30<sup>th</sup> of September, as well as the destructive group activity that ultimately ends with them sexually assaulting Melanie.

I begin the chapter by introducing each of the accused as they are constructed in the courtroom: as individual characters with individual roles to play in the events that occurred. I continue by connecting the Tisdale case to other cases in which young white men engage in the same activity of 'booze-cruising' and end the night by brutalising an Indigenous woman or girl. Aside from the behavioural similarities amongst the accused in these other cases mentioned, the cases are also connected to one another by the trial judge in *R v Edmondson* and *R v Brown and Kindrat*, Justice Kovach. By connecting the Tisdale case to these other cases, I trace a pattern that shows how the brutalising of Indigenous women and girls is associated with other leisure activities, such as booze-cruising. In these scenarios, alcohol consumption is

written as 'the cause' of the accused's violence, who are all otherwise perceived to be innocent.

I conclude the chapter with reference to the testimony of two witnesses from the community who speak to what they saw as the normalcy of the accused's activity on the 30<sup>th</sup> of September. Their testimony highlights a subtle discontinuity in which the accused are simultaneously constructed as responsible young men and also as "boys" who, while out on a rural adventure, are allowed a degree of poor judgment. The legitimacy afforded by their leisure activity, which is a marker of how they 'fit-in' in Saskatchewan, diminishes their culpability for circumstances on the 30<sup>th</sup> of September and obscures the violence they inflicted on Melanie under the guise of their normalised activity having maybe gone a bit too far.

The data that substantiates this chapter is drawn from across the trial transcripts in both *R v Edmondson* and *R v Brown and Kindrat* and organised around concepts as opposed to written in the chronological order of the trials. This is done to first provide a broad conceptual understanding of how the themes identified solidify the place of the accused as normal young men in Saskatchewan, and how this normalisation is an enactment of the settler colonial identity as understood through race, space and gender, as explored in chapter 3.

## **A. Introducing the accused - individually**

Throughout the trials of Edmondson, Kindrat and Brown, much is made of the "very unusual" and "unique set of circumstances" that shaped the fates of the accused (*R v Edmondson*, Vol. IV: 783). As previously mentioned, there were two separate trials in 2003 pertaining to the events of September 30th 2001: *R v Edmondson* and *R v*

*Brown and Kindrat.* Dean Edmondson was the first of the accused tried over a two week period in May 2003. Brown and Kindrat were tried jointly over a two week period a month later in June. Both trials were ruled over by Justice Fred Kovach. Edmondson is given a sentence that Justice Kovach acknowledges as “rare indeed” in light of Edmondson having been convicted by the jury of sexual assault while being party to sexual assault (*R v Edmondson*, Judge’s Sentence: 14).

Being party to sexual assault refers to a multiple perpetrator rape, which the judge colloquially refers to as “tantamount to a gang rape” when summarising the Crown’s position in his sentencing (*Ibid*: 3).<sup>1</sup> The notion of these three young, white, rural prairie ‘boys’ having committed a “gang rape” is unconvincing to Justice Kovach (*Ibid*). He instead refers back to the unusual circumstances of the assault, which he interprets as warranting an unusually light sentence for Edmondson. Justice Kovach sentences Edmondson to two years of house arrest. The conditions of his house arrest permit him to maintain his regular employment, but he must reside with his parents, abstain from consuming alcohol, as well as surrender his hunting rifles as a matter of standard practice (*Ibid*: 20-21 and 26). Jeffrey Brown and Jeffrey Kindrat, as mentioned in the introduction, are both acquitted of all charges.

Starting with the end in mind, the overarching project of these chapters of analysis is uncovering what the ‘unique set of circumstances’ referred to by Justice Kovach are. Each of the accused have a particular role to play in the events as they unfolded that night, and their roles are meticulously divided in the courtroom in the name of fairness in assessing their individual responsibility, despite what was a collective action in sexually assaulting Melanie. The preoccupation with maintaining

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<sup>1</sup> Ullman, “Multiple Perpetrator Rape Victimisation: How It Differs and Why It Matters,” 199.

their individuality manifests as lengthy *in camera* discussions amongst the lawyers and the judge. These discussions are primarily concerned with protecting the accused from incriminating themselves as they are called to testify in each other's trials while also giving direction to the jury, urging jury members to remember that each accused individual should only be judged based on the actions that have been individually attributed to him. I begin the first section of this chapter by considering the accused as they are constructed in the courtroom: as individuals. I provide a brief introduction to each of the accused and what was conceived of as their individual roles in what took place on the night in question.

## Dean Edmondson

Born on the 18<sup>th</sup> of February 1977, Dean Edmondson was twenty-four years old at the time he sexually assaulted Melanie with his friends Jeffrey Brown and Jeffrey Kindrat. Edmondson was the owner and operator of the silver Chevrolet pick-up truck the three accused were driving on the night of the 30<sup>th</sup> of September. Edmondson was the connection between Brown and Kindrat, who otherwise did not know one another very well. Edmondson shared a trailer home in the town of Tisdale with Kindrat and was employed as a welder with Brown. According to the version of events offered by everyone in the truck on the night in question, Edmondson was the first to kiss Melanie, and the first to engage (or 'attempt' to engage, as the three accused describe it) in intercourse with Melanie in front of the truck. He was also the last. Edmondson was sitting on the front bumper of his truck with Melanie on his lap facing him.

By his own description, Edmondson was a consistent presence while first

Brown and then Kindrat took turns approaching Melanie from behind (R v Brown and Kindrat, Vol. II: 428). Edmondson is described as looking younger than his age and is portrayed as having had some kind of legitimate, albeit misguided, interaction with Melanie who, he says, was the one to start kissing him after she “jumped” into his lap while he was driving (R v Brown and Kindrat, Vol. III: 600). It was this action on her part, he says, that forced him to pull over onto an approach beside a field of stubble (Ibid).

Edmondson is a welder, he drives a truck, he lives in a trailer home in Tisdale, and he is described as solemn, cooperative, quiet, pleasant, responsive, matter-of-fact and polite in his dealings with police (R v Edmondson, Vol. I: 18-19). Edmondson is what might be described as an average, small town Saskatchewanian. This is reinforced by the down-home friendly tone of Edmondson’s lawyer Hugh Harradence when cross-examining the RCMP Constable who took Melanie’s statement in the hospital the day Edmondson was arrested:

Harradence: So, this girl had laid a complaint of sexual assault that you’d actually taken.

Constable Shepherd: Right.

Harradence: And, Mr. Edmondson supposedly had told you and Corporal Bohlken that he was with this girl out near Mistatim or out east of Tisdale. Correct?

Constable Shepherd: Right.

Harradence: And, she’d laid a complaint again- of sexual assault against a fella named Dean -

Constable Shepherd: Right.

(Ibid: 117)

The exchange is made friendly and informal with the use of the colloquial ‘fella’ in reference to Edmondson. It implies a familiarity, or a level of comfort with the

accused that is mirrored throughout Harradence's seemingly innocuous description of how Constable Shepherd ended up arresting and questioning Edmondson in the first instance. Harradence's breakdown of events starts with a girl "who laid a complaint." Then Edmondson, cooperating with the police, said that he had indeed been with this girl and named his two friends – Jeff Kindrat and Jeff Brown. By such a description, it could be imagined that Melanie walked into the local RCMP detachment of her own volition and asked if she could lay a complaint of sexual assault against "a fella named Dean."

Such a portrayal starkly contrasts with the reality that Melanie had been taken to the hospital by her friend's father, Gary Pierce, the night before. At the hospital, she was sedated in order that a sexual assault kit, consented to by her father on her behalf as a minor, could be performed on the recommendation of RCMP Constable Philip Charles Degruchy. Constable Shepherd, the same constable questioning Edmondson, tended to Melanie in hospital to get her statement the morning after the assault. What choice Melanie had to give a statement or not under these circumstances is unclear. The acquiescent and familiar description of Edmondson as a young man who happily cooperated with the police effectively sets the tone for how he is portrayed throughout the remainder of the trial. Edmondson is from a well-known family in the town of Tisdale, so Harradence's familiar tone is not without warrant. Justice Kovach notes that the court received 53 letters of support for Edmondson to be considered in his sentencing. It is in part due to the content of these letters that Justice Kovach concludes Edmondson "has very substantial community support" and ought to be returned to his community to serve his time (R v Edmondson, Judge's Sentence: 17). The specifics of how Edmondson is



constructed as a community insider, and what privilege this affords him, will be taken up in chapter 5.

## Jeffrey Kindrat

At the age of twenty, Jeffrey Kindrat was the youngest of the accused. He was a former popular high school athlete. He told police that he erred by succumbing to the pressure of Melanie's demand for "more, more" after Brown pulled away from her (*R v Brown and Kindrat*, Vol. I: 112). Corporal Bohlken asked Kindrat whether or not he had intercourse with Melanie. He tells Corporal Bohlken that he does not know, but he knows he tried, and thinks he "couldn't get it up" (*Ibid*). Corporal Bohlken asks whether he was "not sure because of the drinking, like you don't remember?" and follows up with "did you - so you didn't ejaculate then?" (*Ibid*). Brown and Edmondson did not claim they 'couldn't get it up' in their initial statements to police but ultimately make the same claim when they testify in each other's trials, saying they were also too intoxicated to have intercourse (*R v Edmondson*, Vol. III: 427 and *R v Brown and Kindrat*, Vol. II: 447).

Kindrat's voice is most notably absent from the trials, existing only by second-hand reference to his statement to police. He does not testify in *R v Edmondson* or in his own trial, and even during his arraignment his lawyer, Stuart Eisner, informs the court that his client will be "standing mute" in entering a plea (*R v Brown and Kindrat*, Vol. I: 5-7). A 'not guilty' plea is entered by default on his behalf. Outside small parts of his statement to the RCMP being repeated in court, Kindrat's presence in *R v Brown and Kindrat* exists almost entirely through people speaking on his behalf. In addition to several character witnesses that include old

teachers, his high school football coach and the recently retired highest ranking RCMP officer at the Tisdale detachment, without any prompting the officers responsible for his arrest also provide a bigger picture of what is at stake for Kindrat as a young man accused of sexual assault.

Kindrat was working on a roofing job in an area called Zenon Park that was outside the jurisdiction of the Tisdale RCMP. The Tisdale detachment contacted the neighbouring Carrot River detachment to collect Kindrat. Corporal Bohlken and Sergeant Homeniuk of Tisdale arranged a rendezvous point with Corporal Smith of Carrot River that was just over twenty miles from the Zenon Park home where Kindrat was working. Crown counsel Cameron Scott asks Corporal Smith if he and Kindrat had any conversation during the twenty mile journey. Smith says "...we had other conversations about other things" (Ibid: 17).

Scott: Okay. When you say "other conversations about other things" do you recall what that was?

Corporal Smith: There was about his job and him going to school and his desires of possibly going to Ireland to work and stuff like that.

Scott: Nothing further - -

Corporal Smith: No.

Scott: - - about the incident that you would have been informed of?

Corporal Smith: No.

(Ibid)

Corporal Smith's congenial chat with Kindrat invites sympathy for the young man who has just been accused of sexual assault by sharing his hopes and dreams for the future – school, travel, new work experiences. September 30th is conveyed and interpreted as an anomalous event in the lives of all the accused (in contrast to

Melanie, as will be explored in both chapters 5 and 6), but the anomalous nature of the date is most evidently expressed in the portrayal of Kindrat. Largely absent of Kindrat's own voice, testimony pertaining to Kindrat leads, as above, to unprompted digressions into what is at stake for him.

At the time Corporal Smith was chatting to Kindrat on their twenty mile drive, Melanie was still recovering in hospital and would be continuing to do so for another 24 hours. Kindrat is described as having been upset while talking to police in Tisdale. In *R v Brown and Kindrat*, Jeffrey Brown's lawyer Mark Brayford remarks to the officer who questioned Kindrat, "this appeared to be an emotional time for this young man as he spoke to you," to which the officer responds, "once he - - he had stated to me that, in fact, there had been sexual contact, then yes, he was quite emotional. . ." (Ibid: 144). In the interaction between Corporal Smith and Mark Brayford, there is no acknowledgment of the violence done to Melanie against the backdrop of the potentially lost opportunities for Kindrat and the emotion he felt in admitting sexual contact. Kindrat was acquitted of all charges in 2003. After appeal, a new trial was ordered which took place in 2007. He was tried alone in the 2007 trial due to Brown being unable to attend the trial following a serious accident with an all-terrain vehicle. Kindrat was acquitted for the second time in 2007 and there were no further appeals.

## Jeffrey Brown

Brown is the eldest of the three accused. He was twenty-five years old at the time of the assault. He is portrayed as well-meaning, but not very bright and not particularly invested in the trial process. Brown is known in the community, but not from as

well-known a family in town as Edmondson, and so does not have tens of letters of support coming in to the judge. He is also not as emotive and well-connected as Jeff Kindrat, who has the retired RCMP sergeant and the high school football coach testifying in support of his moral fortitude. Yet, like Kindrat, Brown is acquitted of all charges in their joint 2003 trial. Call for a retrial came in 2005 after the Court of Appeal overturned the acquittals due to an error made in instructing the jury. An analysis of those trial transcripts are beyond the scope of this thesis, as explained in chapter 3, but reference to them is relevant here as an example of Brown being expressly unengaged in the process with his lack of attention to the decisions made about a retrial.

As mentioned above, Brown was not tried alongside Kindrat in 2007, as he had a serious accident with an all-terrain vehicle. The accident left him wheelchair-bound. After Kindrat's trial in 2007, Brown's lawyer filed a request to reopen the 2005 appeal that required Brown to face a retrial. Brown's newly-appointed lawyer pointed to the fact that Brown did not have counsel during the 2005 appeal so as to file any such paperwork, but the courts responded that Brown "opted not to actively participate in the appeal and sent a letter saying he was prepared to abide by whatever decision the judges made regarding his co-accused Kindrat."<sup>2</sup> The Court expressed exasperation to the media in December 2007 citing numerous letters in the court file that had been sent to Brown asking that he retain a lawyer and move forward with the necessary paperwork to appeal the decision if he so chose. Brown never responded to the requests. Justice Cameron was quoted in the Regina *Leader Post* as saying "it baffles all of us, Mr. Brown's inattention to things... he just

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<sup>2</sup> Canadian Press, "Tisdale Man's Bid to Reopen Appeal Denied."

doesn't seem to come to grips with things.”<sup>3</sup> Justices Gerwing and Sherstobitoff who ruled on the 2005 appeal confirmed they would not, at such a late stage, reopen the appeal. Brown's retrial did eventually take place in the spring of 2008. The trial resulted in a hung jury. The charges were stayed and no further appeals were pursued by the Crown.

Brown's lack of engagement with the trial is echoed in the statement he makes to police in the first instance. Unlike both of his co-accused who, eventually, admit to some level of sexual involvement with Melanie, Brown plays dumb. He tells the questioning officer, Constable Degruchy, that he figures he “would have seen or heard something” if anyone was trying to engage in intercourse with Melanie. Constable Degruchy asks him, “why do you think she would say you and your buddies sexually assaulted her?”, to which Brown replies, “honest to God, I have no clue. We thought we were doing her a favour by giving her a ride” (R v Brown and Kindrat, Vol. I: 195). Brown also tells Degruchy that he and his two co-accused just had a few beers that night and were not driving around heavily intoxicated. This is a story he would later change in order to claim that he was too intoxicated to ‘get it up’ and too intoxicated to remember clearly the sequence of events that culminated in Melanie ending up in hospital that night.

At risk of perjuring himself when called to testify, Brown changes his story dramatically once on the stand. He is given ample leeway in the courtroom on the grounds that he may not have understood the questions as they were posed, something that will be explored in-depth in the next chapter that deals with how inconsistencies in the accounts of the accused are interpreted by Justice Kovach as

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<sup>3</sup> Ibid.

consistent. When asked about his motivations for being out drinking on a Sunday evening while on the stand, Brown explains he was upset that evening. His grandmother had passed away earlier that day, and so he was out engaging in the prairie past-time of 'booze-cruising' with friends (R v Edmondson, Vol. III: 418). This statement provides a bridge into the next section by alluding to male bonding practices, the use of alcohol in facilitating these practices, and the specificity of space and place in the settler colonial context. The next section will situate the activity of the accused on the 30<sup>th</sup> of September within the broader context of sexual violence against Indigenous women and girls.

## **B. Young white men in cars: A legacy of settler violence**

In spite of the desire to isolate the accused and parse out their individual actions and involvement in Melanie's assault, the events of September 30th do not exist in a vacuum. The activity of young men picking up Indigenous women and girls, drinking to excess, sexually assaulting and, oftentimes, murdering them is not without precedent. Among the most well-known cases is that of Helen Betty Osborne. Osborne was a nineteen year old student from Norway House, Manitoba who had moved to the town of The Pas to attend school. On the evening of the 12<sup>th</sup> of November 1971 she was abducted by four white men, who were between the ages of 18 and 25. Osborne was sexually assaulted and stabbed with a screwdriver fifty-six times. It would not be until fifteen years later that any charges were laid in the case, despite the fact that the identities of those who had committed the murder were apparently common knowledge in The Pas.<sup>4</sup> Even the town sheriff was aware of the

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<sup>4</sup> Lisa Priest, *Conspiracy of Silence*, (Toronto: McClelland & Stewart, 1989).

identities of the four perpetrators, because one of the men had told him that Osborne was killed for refusing to have sex with them.<sup>5</sup> In 1986 two of the men, Dwayne Johnston and James Houghton, were charged with murdering Osborne. Johnston was convicted in 1987 and sentenced to ten years of imprisonment. Houghton was acquitted. Of the other two, Lee Colgan was granted immunity in exchange for his testimony against Johnston, and the fourth man, Norman Manger, was never charged as it was believed he was too intoxicated to have participated in any significant manner.

In 1990 there was Manitoba Justice Inquiry into the murder of Helen Betty Osborne that concluded that her murder was a “racist and sexist act. Betty Osborne would be alive today had she not been an Aboriginal woman.”<sup>6</sup> The inquiry noted the police service were aware that it was common practice among young white males to cruise the town “attempting to pick up Aboriginal girls for drinking parties and for sex,” but they “did not feel that the practice necessitated any particular vigilance” on their part.<sup>7</sup> The judge presiding over the inquiry said that the men who abducted Osborne were informed by “vicious stereotypes born of ignorance and aggression,” believing that “Aboriginal women were promiscuous and open to enticement through alcohol or violence.” The judge continued: “it is evident that the men who abducted Osborne believed that young Aboriginal women were objects with no human value beyond sexual gratification.”<sup>8</sup> It was also concluded that the settler community of The Pas, as well as the local authorities, had failed to value the lives of Indigenous

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<sup>5</sup> Hernan Vera and Joe R. Feagin, “The Study of Racist Events,” 66-77, *Researching Race and Racism*, ed. Martin Bulmer and John Solomos, (London: Routledge, 2004), 71.

<sup>6</sup> qtd. in Amnesty International, *No More Stolen Sisters*, (Canada: Amnesty International, 2009), 5.

<sup>7</sup> qtd. in Amnesty International, *No More Stolen Sisters*, 5.

<sup>8</sup> qtd. in Amnesty International, *No More Stolen Sisters*, 5, and Amnesty International, *Stolen Sisters: a Human Rights Respond to Discrimination and Violence Against Indigenous Women in Canada*, (Canada: Amnesty International, 2004), 29.

women and had obstructed justice by keeping silent about the crime.<sup>9</sup>

In a cruel reminder for Osborne's family of the ongoing systemic violence perpetrated against Indigenous women, two of Osborne's cousins have gone missing since [the trials]. Felicia Solomon went missing in March 2003 at the age of sixteen. Felicia's partial remains washed up on the banks of Manitoba's Red River in June of that same year. Felicia's murder remains unsolved. Claudette Osborne went missing in July 2008, aged 21. There have been no leads as to her whereabouts since. Both young women can be found in the *Sisters in Spirit* database maintained by the Native Women's Association of Canada (NWAC). As of NWAC's most recent 2010 report, there are 582 cases of Indigenous women who are missing or who have been murdered. The majority of the cases compiled in the database have occurred since 1990, mostly in the western provinces. Half of them remain unsolved.<sup>10</sup> As NWAC's figures apply to Saskatchewan, Indigenous women are more often than not murdered by a stranger. This differs from the national figures, which states more Indigenous women are killed by acquaintances.<sup>11</sup>

One such high profile case in Saskatchewan is that of Pamela George. Pamela George was murdered by two University of Regina students, Steven Kummerfield and Alex Ternowetsky, in 1995. The university term had just ended and the students had gone out to celebrate. Their celebration involved drinking together in a variety of isolated areas, and cruising Regina's North Central neighbourhood. One of the men then hid in the trunk of the vehicle as they approached Pamela George who was working as a prostitute that night. George

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<sup>9</sup> qtd. in Amnesty International, *No More Stolen Sisters*, 5.

<sup>10</sup> Native Women's Association of Canada, *Fact Sheet: Missing and Murdered Aboriginal Women and Girls*.

<sup>11</sup> Native Women's Association of Canada, *Fact Sheet: Missing and Murdered Aboriginal Women and Girls in Saskatchewan*.



agreed to get in the car and she was driven two miles outside the city. When the second man emerged from the trunk the two men testified that George was frightened and tried to defend herself. The men sexually assaulted her, beat her, and left her face down in a field where her body was found the following morning. The men confided in several friends and family members that they had “beat the shit” out of “an Indian hooker” and they thought they might have killed her.<sup>12</sup>

Ternowetsky flew to the resort town of Banff within days of the murder to unwind with other university students. He bragged about having raped and beaten up ‘a hooker’.<sup>13</sup> Immediately after the incident, one friend washed the bloodstains off of some of their clothes. Another expressed concern for the possibility that Kummerfield might spread a venereal disease to his white girlfriend and argued that he should break up with her if he had not used a condom. At the chalet in Banff one friend told Ternowetsky he should not automatically assume that he killed George and that he ought not to worry about getting caught. Kummerfield’s mother offered to call in a false tip to Crimestoppers, just in case. In her detailed analysis of the court transcripts, Sherene Razack points out that in these conversations with friends and family there was no “indication that the men acknowledged that a woman had been brutally murdered; her death seemed almost incidental and simply inconvenient.”<sup>14</sup> In addition, the community to which Ternowetsky and Kummerfield belonged sought to protect them.

Razack notes “it is difficult to avoid parallels between the murders of Helen

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<sup>12</sup> Razack, “Gendered Racial Violence and Spatialized Justice: The Murder of Pamela George,” 140.

<sup>13</sup> Ibid., 141.

<sup>14</sup> Ibid., 140.

Betty Osborne and Pamela George.”<sup>15</sup> Perpetrators in both instances were young white men drinking together, driving around together, and both groups of men were subsequently protected by their communities after they brutally murdered the Indigenous women they picked up. In an effort to diminish the brutality of Ternowetsky and Kummerfield’s actions, defence counsel says “. . . She wasn’t stabbed forty times. There wasn’t a hammer used.”<sup>16</sup> Such an example draws an uncomfortable parallel with the known details of Helen Betty Osborne’s murder in which she was stabbed fifty-three times, also with a piece of hardware. Such a comparison implies that the accused could have been much more brutal than they were, intimating that they ought to be given some credit for beating Pamela George to death by punching and kicking her and leaving her in a field as opposed to stabbing her death with a weapon. Indeed, the defence did succeed in reducing their clients’ charge from murder to manslaughter.

Those words uttered by the defence lawyer in Pamela George’s murder trial belong to Fred Kovach, counsel to Steven Kummerfield. After defending Kummerfield in this high profile case, Kovach was appointed to the Court of Queen’s Bench where, in 2003, he was assigned to hear *R v Edmondson* and *R v Brown and Kindrat*. In the same way that he attempted to diminish the brutality of the method of Pamela George’s murder by comparing it to that of Betty Osborne, in his sentencing of Dean Edmonson, Justice Kovach iterates that “Dean Edmondson did not drop this complainant off in a field. . .” (*R v Edmondson*, Judge’s Sentence: 10). The trials pertaining to Pamela George’s murder had only wrapped a few short years previous to Justice Kovach making this statement, one of the most resonant

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<sup>15</sup> Ibid., 143.

<sup>16</sup> Ibid., 150.

images from which was George being left facedown in a field by the men who beat her to death. That Edmondson, Kindrat and Brown “determined the home where the complainant wanted to go and took her there” is an instance of kindness set only against a backdrop against which much more brutal things have happened to other Indigenous women (R v Edmondson, Judge’s Sentence: 10).

These three cases are linked to one another, not only by subtle references made by Fred Kovach, but as part of a much broader context in which the lives of Indigenous women are routinely devalued in settler society. In chapter 3, I demonstrated how the bodies of Indigenous women are literally and metaphorically constructed as ‘dirty’. I quoted Andrea Smith as saying, “because Indian bodies are ‘dirty’, they are considered sexually violable and ‘rapable’.”<sup>17</sup> Further to this, the bodies of Indigenous women hold a symbolic power within patriarchal settler colonialism, in which right to land extends to the bodies therein.<sup>18</sup> In chapter 6, I associate Melanie’s construction in the courtroom in the broader context of a conversation about missing and murdered Indigenous women and girls. In light of these contexts, there are commonalities across these three different cases in the actions of young white men brutalising Indigenous women.

In all three instances, the assailants are out on a small adventure, drinking and driving with friends. They all committed their acts of brutality in open air locations outside of town. They were all otherwise ‘nice’ young men whose actions of brutality were understood as anomalous and separate from their daily lives. They were supported or protected by their communities. The brutality inflicted on Helen Betty Osborne, Pamela George, and Melanie is a process of identity-making for their

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<sup>17</sup> Smith, *Conquest*, 12.

<sup>18</sup> Razack, “Gendered Racial Violence and Spatialized Justice: The Murder of Pamela George,” 136.

attackers, who come to know themselves as powerful and in control in settler society by their right to violate the bodies of Indigenous women. In the absence of naming the settler colonial context in which the violence was enacted, intoxication is named as the sole cause of their behaviour.

### **C. Drinking, driving and male bonding in settler society**

While self-induced intoxication is not a defence in law for committing sexual assault, alcohol consumption nonetheless provides the scapegoat for making sense of these brutal offenses committed by otherwise 'nice' young men. It is evident in Helen Betty Osborne's case the degree to which intoxication reduced the culpability of her attackers when one of the four did not even stand trial due to his level of intoxication being deemed too severe for him to know what he was doing. In Pamela George's murder trial, the defence counsel laments, "you come to realise how easy it is for two otherwise average young boys with a booze problem to find themselves in a whole pile of extremely serious criminal difficulty."<sup>19</sup>

In *R v Edmondson*, Justice Kovach concludes that he is "satisfied that alcohol played a very significant role in the offense" and directs Edmondson to choose either alcohol treatment or sexual offender treatment in the time of his two-year house arrest (*R v Edmondson*, Judge's sentence: 16, 21). Again, while not a defence in law, alcohol will also play a role in legitimising the claims made by Edmondson and Brown in their testimony that they cannot really explain the events of that night because they were too drunk to process them. In each instance, there is some notion that the men were engaging in ordinary young male behaviour, out drinking and

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<sup>19</sup> Ibid., 150–151.

driving in the wilderness, and in an anomalous incident in their otherwise good and decent backgrounds, they took things too far. That Indigenous women bear the brunt of their adventures is lost in the trials.

These commonalities point to an overarching process of young male identity-making in a settler colonial society in ways that are linked to intoxication, their relation to space, and these activities' engagement with a social bonding practice. As it applies to *R v Edmondson* and *R v Brown and Kindrat* there is an implicit, unarticulated understanding about the nature of what the accused were doing the night they came across Melanie. This is partly evident in sections of the trial transcripts during which the accused are asked to talk about their relationships with one other. In this excerpt from the *R v Brown and Kindrat* transcripts, Edmondson is asked to talk about his relationship with co-accused Jeff Brown:

Parker: Now, who is Mr. Brown to you?

Edmondson: A friend.

Parker: How long has he been a friend?

Edmondson: Oh, I don't know, ten years or so, I guess.

Parker: Okay. What year did you graduate from high school?

Edmondson: '96.

Parker: What year did he graduate?

Edmondson: I'm not sure if he graduated.

Parker: Okay. And do the two of you do anything together?

Edmondson: Well, yeah –

Parker: What?

Edmondson: - - buddies, so I don't know, fishing –

Parker: Okay.

Edmondson: I guess we worked together.

Parker: You've been friends for ten years and you do regular friend-like activities - -

Edmondson: Yeah.

Parker: - - fair to say? Okay, do you also work together?

Edmondson: Yeah.

(R v Brown and Kindrat, Vol. II: 409-410)

Edmondson provides a rough description of the nature of his relationship with Brown, clarifying that they are “buddies,” which is a degree of specificity beyond “friends.” Crown counsel helps Edmondson along by filling in the space with “you do regular friend-like activities.” James McNinch points out this is an “imprecise articulation” of their friendship, which need not be probed any further by Parker because there is an implicit understanding of a normative, non-expressive heterosexual masculinity.<sup>20</sup>

The meaning of Edmondson and Brown being buddies who go fishing and do regular friend-like activities together is presumed to be comprehensible to everyone in the courtroom. This is in contrast to the probing nature of the questions asked of Melanie, wherein more detail is consistently required for her answers to be considered legitimate, and she is told on several occasions to speak up and to answer the question clearly “in fairness to all the people who are here and waiting” (R v Brown and Kindrat, Vol. II: 395). The privilege of the accused is evident in part

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<sup>20</sup> McNinch, “‘I Thought Pocahontas Was a Movie’: Using Critical Discourse Analysis to Understand Race and Sex as Social Constructs,” 155.

through the lack of articulation required on their part for the court to make sense of their testimony (and Chapter 6 will demonstrate the degree to which Melanie, in comparison, is consistently asked to articulate her position). The privileging of the accused's lack of articulation will also be evident chapter 5, in which I discuss them in their role as community insiders.

Other behaviour implicitly understood in the local Saskatchewan context is 'booze-cruising'. A colloquial understanding of booze-cruising, drawn from my own experience growing up in Saskatchewan, is that it describes the activity of getting in a vehicle (usually a pick-up truck) with a few friends, drinking heavily (usually beer), and then driving around on rural grid roads outside of town where one is unlikely to come across anyone else, or where one is unlikely to be caught drinking and driving by the RCMP. It is a common practice, especially in rural areas where there is not much by way of entertainment for young people. It is an activity usually associated with young men who may sometimes invite young women along to ride in the backseat. This describes what the assailants were doing in all three cases mentioned here before they came across Helen Betty Osborne, Pamela George, and Melanie, respectively. There is very little written about the phenomenon of booze-cruising, but a 2003 article about leisure activity in rural Saskatchewan calls it "a badge of identity" that is "inextricably attached to the symbol of power in the rural community - the automobile."<sup>21</sup>

As the only source of mobility in rural areas, the automobile is a marker of freedom. Wardhaugh notes the gendered nature of booze-cruising in saying that the

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<sup>21</sup> Wardhaugh, "Bush Parties and Booze Cruises: A Look at Leisure in a Prairie Small Town," 83.

domain of the automobile was chiefly masculine, so that “cars and booze” are “symbols of male power” in rural Saskatchewan.<sup>22</sup> At no time are Edmondson, Kindrat or Brown asked to account for what compelled them to engage in the illegal activity of drinking and driving. The most articulate reason for why they were out that night is provided by Brown when he tells the court that he was upset about his grandmother passing away earlier that day. Booze-cruising, and the gendered power relations bound up in it, is implicitly understood as the way in which Brown was managing his grief and the way in which his buddies were supporting him: it was a release. Razack’s analysis of the Pamela George murder trial speaks to the colonial nature of this local pastime by highlighting the process through which young white men learn about themselves in relation to space and land in the settler colonial context.<sup>23</sup>

The identity-making process is one of transgressing boundaries between civil urban spaces and vast, rugged, largely unpopulated rural spaces. Wardhaugh notes that the prominence of outdoor leisure activities in places such as Saskatchewan is a “badge of hardiness.”<sup>24</sup> It is through activities such as booze-cruising that young white men come to know themselves as masters of the space claimed by their ancestors. As understood by the lack of interrogation as to what Edmondson, Kindrat and Brown were doing drinking and driving that night, their right to be in the space is implicit. This is again contrasted in Melanie, who does not have the same implicitly understood right to mobility as a young Indigenous girl. As will be taken up in more depth in chapter 6, her status as ‘a run-away’ identifies her as someone engaging in

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<sup>22</sup> Ibid., 82.

<sup>23</sup> Razack, “Gendered Racial Violence and Spatialized Justice: The Murder of Pamela George,” 140–144.

<sup>24</sup> Wardhaugh, “Bush Parties and Booze Cruises: A Look at Leisure in a Prairie Small Town,” 83.



risky activity that goes some way to shifting responsibility for the violence that came to her away from the accused. Unlike the accused, she is obviously out of place in the white spaces of the small towns visited while booze-cruising, as will be demonstrated in chapter 6.

The violence perpetrated against her on the night in question, as well as her re-victimisation in the courtroom, exists in its context as a continuation of a colonial pattern of removing and disciplining Indigenous bodies in an effort to reassert the settler right to land that the accused were re-enacting in booze-cruising. It is worth noting that the structure which facilitated the accused's capacity to navigate the land while booze-cruising, and thus support their sense of mastery over it, was the system of grid roads grafted onto the prairie landscape by the *Dominion Land Survey* explored in chapter 2. This is indicative of the importance of controlling and managing space in a settler colonial context and the legacy of such physical, geographic structures.

The activity of booze-cruising, and all it implies, is identifiable as normal behaviour because of the imprecise articulation needed to make sense of it in the courtroom. McNinch calls the imprecise articulation a "typical code of homosocial connection" where the logic of such activity need not be deconstructed in order for it to be understood.<sup>25</sup> The legitimacy afforded the homosocial connection amongst the accused, read together with the legitimacy of their intoxication and their right to land as part of heterosexual male settler bonding practice, serves the powerful function of allowing the accused to claim that they were unaware of what actually happened and who did what the night they picked up Melanie. Given their status as 'normal' young

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<sup>25</sup> McNinch, "'I Thought Pocahontas Was a Movie': Using Critical Discourse Analysis to Understand Race and Sex as Social Constructs," 155.

men, it is suggested that it would be strange if they *could* tell the court what the other accused were doing. This is most evident in Edmondson's cross-examination by Brown's defence lawyer, Mark Brayford:

Brayford: You're touching her, she's touching you?

Edmondson: Yes.

Brayford: When you're first out there, your recollection at this point it that the other two fellows are still even in the truck?

Edmondson: I believe so.

Brayford: I suggest to you, the last thing that you're thinking about is when they got out of the truck?

Edmondson: Yes.

Brayford: At some point you know these two fellows got out of the truck -

Edmondson: Well, yeah.

Brayford: - - because you saw them outside, and later on they were there when the complainant was being dressed?

Edmondson: Yes.

Brayford: But once again, I'll harken back to the movies. When people are being intimate, it's just not normal to keep your eyes wide open, I suggest to you, based on what you've seen in the movies?

Edmondson: No.

Brayford: And what these other two fellows were up to, you couldn't care less at that point?

Edmondson: Yes.

(R v Brown and Kindrat, Vol. III: 621-622)

Academic work in the field of multiple perpetrator sexual assault notes the degree to

which group sexual assaults are an intimate act of male bonding.<sup>26</sup> It is the closest two men can be to one other without threatening their heterosexuality.<sup>27</sup> The women who are the victims of multiple perpetrator sexual assault are merely a body, a personified vehicle, through which their attackers bond with each other. Operating from a perspective that privileges male heterosexuality, it becomes reasonable for each of the accused to maintain that he never saw another's penis, and thus has no idea if the fellow accused succeeded in having intercourse with Melanie. That they would see each other's penises could have the potential to undermine their heterosexuality. Such a threat is neatly brushed aside and most clearly evident in the trials through Mark Brayford's cross-examination above.

Multiple perpetrator sexual assault is most often spoken of and studied in the context of fraternities, sports teams, or gangs as sociocultural contexts in which the dominant version of masculinity is one that tends to privilege aggression and abhors all things perceived as soft and feminine.<sup>28</sup> This context for understanding multiple perpetrator sexual assault is what Justice Kovach is reflecting on when he says that the charges as laid by the Crown describe a situation "tantamount to gang rape" when he is sentencing Edmondson. The statement is meant to be a boiled-down colloquial version of the charges in order for Justice Kovach to show that they seem, to him, a bit extreme.

While sometimes used as a more general description of one woman being sexually assaulted by more than one man, "gang rape" has other unavoidable

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<sup>26</sup> Horvath and Woodhams, *Handbook on the Study of Multiple Perpetrator Rape*, 3.

<sup>27</sup> Razack, "Gendered Racial Violence and Spatialized Justice: The Murder of Pamela George," 137; See also: Laura Robinson, *Crossing the Line: Violence and Sexual Assault in Canada's National Sport* (Toronto, Ont.: McClelland & Stewart, 1998); Peggy Reeves Sanday, *Fraternity Gang Rape: Sex, Brotherhood, and Privilege on Campus*. ([S.l.]: New York Univ Press, 1992).

<sup>28</sup> Robinson, *Crossing the Line*; Sanday, *Fraternity Gang Rape*; Sanday, "The Socio-Cultural Context of Rape"; White, *Fast Girls*.

connotations that associate the terminology with street gangs.<sup>29</sup> If Justice Kovach was meaning 'gang rape' in the general sense, it is difficult how three men saying they attempted to simultaneously have intercourse with a twelve-year-old girl makes a description of the event as "tantamount to gang rape" seem too far off the mark. On the other hand, if he is conceiving of a gang as something akin to a street gang, then it is much easier to gather why he has difficulty associating these three young prairie fellows with the notion of a gang who committed a gang rape.

While the term 'gang rape' carries an unavoidable connotation of violence committed by street gangs, street gangs carry an unavoidable connotation of race. Tying back to the conversation in the methodology section about the contemporary social reality of Saskatchewan, street gangs are something strongly associated with violent Indigeneity and settler fear. That Edmondson, Kindrat and Brown are 'insiders', part of the settler community, is the reality against which Justice Kovach makes light of what he thinks is the absurdity of the Crown's position being that the events were "tantamount to gang rape."

#### **D. 'Fitting in' in Saskatchewan**

The behaviour of the young men moving from small town bar to small town bar, picking up standard bar snacks like Cheezies, chips, beef jerky and pickled eggs and buying cases of Pilsner, the standard local beer, to take on the road with them, creates an image of three exceedingly 'normal' young Saskatchewanian men. So normal is their behaviour that even with their defence being that they were all so drunk when

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<sup>29</sup> Miranda Angel Helena Horvath and Liz Kelly, "Multiple Perpetrator Rape: Naming an Offence and Initial Research Findings," *Journal of Sexual Aggression* 15, no. 1 (March 2009): 83–96; Sarah E. Ullman, "Comparing Gang and Individual Rapes in a Community Sample of Urban Women," *Violence & Victims* 22, no. 1 (February 2007): 43–51.

they pulled off the road and attempted to sexually assault Melanie that they were unable to achieve an erection, it is never brought up that impaired driving is itself a criminal offence.

There is an implicit legitimacy afforded the activity of driving around the land with a few good pals, a few beers and some snacks, as described above. It is an ideal time of year to be doing so in Saskatchewan. The mosquitoes that would otherwise cover any exposed skin with swollen red bites are now dead. There are no more thunderstorms, plough winds or tornado watches. It is cool, but not yet cold. The hard work of harvest, that will have been the main feature of nightly news casts and idle chit-chat among friends and acquaintances for months, will be winding down. The end of September, as anyone in Saskatchewan could tell you, is hunting season. Like the end of the university semester for Kummerfield and Ternowetsky in the Pamela George case, there is a palpable shift at this time of year from work to leisure: from working on the land to reaping the benefits of the land. More than just normal young male behaviour, going on a booze-cruise with their pals on a clear autumn evening, drinking Pilsner, playing VLTs and eating the standard junk food fare, this is a process of identity-making. Driving along carefully mapped grid roads between vast expanses of recently harvested fields rouses romantic and innocent notions of belonging and community on the prairies. Excursions like these facilitate their bonding with one another and help them to learn who they are and what their place is in the world.

The trial, likewise, is also a process through which they continue to learn who they are in relation to the world in which they live. What is made evident through the trial process is the degree to which the broader settler community in

Saskatchewan is complicit in affirming an identity for them in which they are given the benefit of the doubt and are implicitly understood to have legitimate claims to the space and the Indigenous bodies within.

Ward Kewley and Darlene Hill, the bar tender and an innkeeper who served the men that night in two different town bars not too far away from each other, paint a picture of three polite, respectable young Saskatchewanians who could not embody rural Saskatchewan life any more than they do. Aside from the Pierce residence where the accused dropped Melanie off, Kewley and Hill are the only witnesses from the community to observe some part of the happenings on the 30<sup>th</sup> of September. Kewley and Hill are relative strangers to the accused. Melanie was sitting outside the bar where Ward Kewley served Edmondson, Kindrat and Brown. He says they were “mannerly and conducted themselves well” (R v Brown and Kindrat, Vol. II: 332). The intended function of Kewley’s testimony is to provide a timeline of events, identifying that the three accused were in the town of Chelan at approximately 19h00, but what is brought to the surface in Kewley’s testimony is a portrait of three young men who are identifiable as part of the community (R v Edmondson, Vol. II, 205 and R v Edmondson, Vol. II, 317-321). The accused order their drinks from Kewley and then move over to the VLT’s.

Harradence: You can indicate to me, sir, that these three individuals were polite, cooperative, they looked clean-cut. Correct?

Kewley: Yeah, they were. Yes.

Harradence: And, as you told Mr. Parker, nothing stands out in your mind as far as them - they were playing VLTs and having a drink.

Kewley: Yeah. That is absolutely correct, yes.

Harradence: And, there was somebody else in the bar. There was another group of locals, I think, wasn't it?

Kewley: There was, I believe, six-

Harradence: I don't, I don't need names, sir, just-

Kewley: Yeah. But, I believe there was six other patrons in the bar, four of which were known to me as being local, yes.

Harradence: And, they were conversing with them.

Kewley: Somewhat-

Harradence: Yeah.

Kewley: - - as goes with VLTs and such.

(R v Edmondson, Vol. II: 319-320)

Harradence, counsel for Edmondson, takes the opportunity of the Crown having called Kewley to testify as to the timeline, to make the point that the three accused were 'in' with the local crowd. After chatting with some locals, Kewley reports, they buy a case of twelve or eighteen Pilsners for the road. When the accused leave the bar, they see Melanie sitting on the steps and offer her a ride.

The four of them end up in the town of Mistatim not too long after, where Darlene Hill explains she was closing her hotel early that night because of hunting season (R v Edmondson, Vol. II: 328). Many of her lodgers would be up and out by five in the morning, she explained, so everyone needed to bed down early to make sure the hunters were well fed before heading out. She tells the court she asked the young men what she could do for them and "they just wanted some stuff to go" (R v Edmondson, Vol. II: 325). There is a sweetness in Hill's account of events when she says "I I.D.'d a boy that was 24 years old and he bought one box of beer and a bunch of snack food. That's all they were concerned about was the snack food. I'm guessing

they missed supper” (R v Edmondson, Vol. II: 325). Her reference to the accused as ‘boys’ - a turn of phrase also used by the by Justice Kovach, the defence, the Crown, and other witnesses at intermittent times throughout the trials – and that ‘all they were concerned about was the snack food’ paints a picture of the accused as hungry teenage boys who did not make it home for supper and had to fend for themselves. While the accused are all steadily employed men who are 24, 25 and 20, who are otherwise constructed as responsible young men, Hill would know from their purchases (and, I will suggest in chapter 6, by their company) that they are currently out on an adventure.

Ms. Hill saw Melanie with the accused and tells the court she did not question what the young girl was doing with the three accused. Ms. Hill provides evidence that Melanie was not being held against her will, did not appear to be intoxicated at the time, and that the three accused even seemed disinterested in her. She also reports that she witnessed Melanie smiling at someone else whom she believed Melanie did not know.

Brayford: With respect to the young lady that came in, I think it’s fairly implicit in what you’ve said, but there wasn’t even a hint in your mind that this girl was there against her will?

Hill: You’re right.

Brayford: She had an opportunity to sit by herself?

Hill: Yes.

Brayford: There was no suggestion that any of the men were controlling anything she did?

Hill: They never even looked at her.

Brayford: I believe that you noticed that she smiled at-



Hill: Yes.

Brayford: -some other person there?

Hill: Yes, she did.

Brayford: And you don't, of course, know whether she recognised that person, but in any event you noticed this smile?

Hill: I don't think they knew one another, no.

(R v Brown and Kindrat, Vol. II: 342-343)

In addition to the snack food they purchased, the accused bought another case of twelve or eighteen beers before heading back out on the road. The descriptions provided by Kewley and Hill, as not known to the accused as anything but members of the same shared white community and white space, re-assert the legitimacy of what it is to be a young white man in rural Saskatchewan. In the process, Hill also introduces the idea that the accused were not particularly interested in Melanie, saying "they never even looked at her" (R v Brown and Kindrat, Vol. II, 343). Hill's words provide a subtle support for the claim that Melanie was vying for their attention, and even for the attention of other people in Hill's hotel. I revisit Hill's testimony twice in chapter 6 in discussing firstly how Melanie is constructed as the sexual aggressor, and secondly with reference to Melanie's differing account of what happened when she and the accused were in Ms. Hill's establishment. What is established through Kewley and Hill's accounts is that the accused were simply average boys being boys.

## Conclusion

Kewley and Hill's accounts provide a perfect description of how the accused 'fit in'

in Saskatchewan. They are polite and well-mannered when visiting their establishments in Chelan and Mistatim. The accused were out engaging in very normal Saskatchewanian activities, like playing VLTs, chatting with the locals at small town bars, out booze-cruising, and stopping to pick some snack foods. The extent to which what they did next – together sexually assault Melanie – was also normalised was introduced in sections B and C of this chapter. I demonstrated that the events on the 30<sup>th</sup> of September exist within a broader context in which young white men routinely pick up Indigenous women and girls as part of their booze-cruising adventures.

Contextualised across the interlocking lines of race, space and gender in settler colonial society, booze-cruising was demonstrated to be a way in which young white men come to know who they are in white settler society. It re-asserts their capacity to move between boundaries of civil, urban spaces and unpopulated areas of wilderness unharmed and reinforces their identities as rugged white settlers with mastery over land. It is also a practice through which they bond with one another. Drawing from research on multiple perpetrator sexual assault, I argued that sexually assaulting Melanie was also part of their bonding practice. Within the context of a settler colonial society, their assault on Melanie is part of a larger symbolic structure in which they not only exert a right to land, and a right to roam across civilised and uncivilised spaces alike, but also a right to the bodies within.

In discussing the male bonding aspects of their activities on the 30<sup>th</sup> of September, I also introduced the level of acceptability afforded their imprecise articulations and reasonable blindness in the courtroom. These concepts will feature heavily in the next chapter that expands from the observation that the accused 'fit in'

in Saskatchewan, to establishing their status as community insiders. Imprecise articulation and reasonable blindness are one way the privilege they are afforded as community insiders comes to the surface. This will be juxtaposed against Melanie's construction as an outsider.

## **Chapter 5**

### **Insiders and outsiders: Familiarity and the boundaries of community in settler society**

This chapter deals with how the normalised behaviour of the accused as young men who ‘fit in’ in Saskatchewan affords them status as community insiders in dominant white settler society. This will be juxtaposed against Melanie’s construction as an outsider to white settler society. Solidly situated as community insiders, the respective characters of the accused are constructed in the courtroom as unquestionably normal, good and decent, emanating from the decency of the dominant white community of which they are members. Melanie, by contrast, is actively distanced from the members of the white settler community who she knew, and who assisted her on the 30<sup>th</sup> of September. This is achieved by reference to racialised, gendered, and spatialised assumptions that mark Melanie as troubled, promiscuous and out of place at the home of the white Tisdale family where the accused dropped her off.

As explored in chapter 3, one of the features of settler colonial society is the maintenance of innocence through blindness. This will be reflected in this chapter where privilege functions as a justification of the blindness of the accused regarding their ability to recount the events of the 30<sup>th</sup> of September. Supported by the testimony of the RCMP officers who arrested and questioned the accused, the privilege of the accused as community insiders is then reflected in the judgements made by the trial judge, Justice Kovach. Justice Kovach does not see the inconsistencies pointed out by Crown counsel, and rewrites the accounts of the accused as internally consistent and representative of ‘the truth’ of what happened.

As the person in charge of the courtroom, delivering the instructions to the jury, and sentencing Edmondson, Justice Kovach's understanding of what went on has a marked impact on the trajectory and outcome of the trials.

The three accused, in Justice Kovach's estimation, are seen to present one consistent narrative in which they independently corroborate each others' accounts of Melanie having been the sexual aggressor. Melanie's voice provides the only dissent from their version of events, which is diminished based on her construction as an outsider. Melanie's voice, and a fuller picture of her otherness, will be the subject of the next chapter, but for the purposes of this chapter I will demonstrate how it is she is distanced from 'normal' white settler society through her interactions with the Pierce family. The overall effect of the insider/outsider dynamic is that it serves to maintain the innocence of the accused by privileging their account of what happened and obfuscating the violence they perpetrated against Melanie. In addition, Melanie's construction as an outsider by comparison to the Pierce family situates the source of difference with Melanie. This lays the groundwork for portraying Melanie as a victim of her own Indigeneity, rather than the victim of multiple perpetrator sexual assault committed by Edmondson, Brown and Kindrat.

## **A. Drilling down**

This chapter is a departure in style from the previous one, which moves broadly across the trials. In this chapter, I abandon the broad strokes of the previous chapter and spend more time focussed on specific instances in each trial that are retold chronologically: specifically, the *voir dire*s pertaining to the admissibility of Edmondson's statement, in the case of *R v Edmondson*, and the admissibility of

Kindrat and Browns' statements in *R v Brown and Kindrat*, as well as issues of consistency between Brown's statement and Brown's testimony in *R v Edmondson*. A *voir dire* is a 'trial within a trial' used to deal with issues such as the admissibility of evidence into the trial proper, which occurs without the presence of a jury. The *voir dire*s pertaining to the admissibility of the statements made by the accused exemplify the familiarity that law enforcement officers had with them and what law enforcement believed about their background and character based on that familiarity, marking them as community insiders, and how their familiarity with the accused manifested in the trial as an endorsement of their good character. Their good characters are then assumed to be truth by Justice Kovach and the trial lawyers, and exist as statements of fact that are sustained throughout trials.

Following from the conversation of the *voir dire*s, I will demonstrate how Melanie is subtly distanced from belonging to the same white settler community as the accused through the cross-examination of Gary Pierce and his son Jesse Pierce, at whose family home Melanie was dropped off on the evening of the 30<sup>th</sup> of September 2001. The Pierce family are a 'regular,' white, small town family cut of the same cloth as the accused. In reinforcing an image of Melanie as distinctly outside white settler society, the defence seeks to distance Melanie from the contact and assistance she had from the Pierces. This is likewise a brief, chronological account of their testimony, highlighting the attempts to differentiate Melanie from what is 'normal'. The effort put into distancing Melanie from the Pierce family is made all the more evident by Gary Pierce's periodic resistance to how Melanie is portrayed in reference to his home, his wife, and his son.

## **B. Young men of good character: Constructing the accused as insiders**

In order for Justice Kovach to make any decisions about the admissibility of the statements of the accused, the RCMP officers involved testify in a *voir dire* as to the process through which they made the arrests and obtained the statements. What is evident from their testimony is that they knew the accused personally and made decisions about how the accused were arrested and questioned based on what the officers believed to be ‘true’ about them. Drawing from the normalisation of their activities in the previous chapter, what the officers believed to be ‘true’ was that these were three ‘normal’ guys from town, who were out having a good time and got into a little bit of trouble. The brutality of what happened to Melanie is diminished and virtually non-existent in their testimony in the *voir dire*s.

In Edmondson’s case, his statement is ruled to be admissible because the Crown argues that he gave the statement freely based on appeals the police officer questioning him made to his background and good character. In Kindrat’s case, his defence lawyer Stuart Eisner argues that his statement ought to not be admissible because Kindrat was not aware that the RCMP members questioning him were taking a statement: Kindrat thought he was just receiving their counsel. Brown’s lawyer, Mark Brayford, does not protest the admissibility of his client’s statement. Brown denies that anything of a sexual nature occurred, and says he thought they were doing her a favour by giving her a ride. What is notable about Brown’s situation is how his statement, which claims nothing of a sexual nature happened, and his testimony that all three did attempt to have intercourse with Melanie, are not deemed to be overtly contradictory when they are discussed in the courtroom.

It should be noted here that when I refer to the content of statements given by Edmondson and Kindrat, it will look, based on the citations, as though I am jumping between and across trials. As mentioned in chapter 3, the trial transcripts do not include a typed transcript of the accused's statements to police when they were questioned, and so it is by necessity that I have compiled quotations from their statements as read aloud in court across both trials, by either the judge or the lawyers, to glean a sense of the content of their statements. The exception to this is Brown's statement, which was written out by hand as opposed to videotaped. Brown's statement, which is comparatively short and lacking in detail, is read in full into the court record by the Constable who interviewed him. The data I have with respect to Edmondson and Kindrat's statements is thus limited, and represents only what others in the courtroom deemed necessary to repeat for their purposes. The effect of this, demonstrated in assessing the *voir dire*s below, is that the appeals made by the police officers to what they presumed to be the good background and good character of the accused are repeated.

### Dean Edmondson was 'in a jam' and his history came into play

*R v Edmondson* commences with a *voir dire* on the admissibility of Edmondson's statement, which was taken the day he was arrested and the day after he sexually assaulted Melanie. The arresting officers, Corporal Bohlken and Constable Shepherd, are questioned as to the process of arresting and questioning Edmondson. Corporal Bohlken is the first to be questioned, and he provides a description of Edmondson as "solemn" and "cooperative" in the first few minutes of the trial (*R v Edmondson*, Vol. I: 19). He notes there was nothing "unusual" about Edmondson or



the arrest (Ibid: 18). The Crown asks what Edmondson's demeanour was while in police custody a short time later. Corporal Bohlken responds,

He was – like I said, he was cooperative and he was matter-of-factly answering my questions, or the two questions that I asked him, or three, so – no, I didn't - he wasn't being – what's the word I'm looking for? He wasn't being ignorant or, or abrasive or anything. He was cooperative and pleasant.  
(Ibid: 23-24)

In Corporal Bohlken's estimation, Edmondson was solemn, cooperative, matter-of-fact, and pleasant. Moreover, Edmondson belongs in the Tisdale community. It was because he belongs that the RCMP were able to locate him in town so soon after the assault was reported. Constable Shepherd had attended to Melanie the morning after the assault to take her statement, as she had been unable to provide a statement the night previous and had been sedated in order for the sexual assault kit to be administered. Melanie told Constable Shepherd that following morning that the men who picked her up were in a silver truck and the driver's name was Dean. "Tisdale being a smaller town," said Constable Shepherd, "I knew of Dean Edmondson. I knew he – of course, his first name was Dean. I knew he drove a silver Chevrolet truck" (Ibid: 51). Shepherd also knew where Edmondson lived. Constable Shepherd went with his superior, Corporal Bohlken, to speak to Edmondson at the trailer home he shared with Kindrat. Once at the trailer home, Corporal Bohlken questions Dean as to his whereabouts and his company the night previous. Edmondson confirmed he had been with a young Indigenous girl the night previous and that he was with his friends Jeffrey Brown and Jeffrey Kindrat. Shepherd asks that Corporal Bohlken leave the questioning to him once they have all returned to the detachment.

Shepherd facilitates Edmondson getting in touch with his father once they are

back at the detachment in order to secure a lawyer. Edmondson's father suggests a well-known lawyer in town, Mr. Klimm. Shepherd offers that he happens to be aware that Mr. Klimm is no longer practising criminal law, if Edmondson would like to call his dad again for another suggestion. He does, and Constable Shepherd then gives him the means to get in touch with another lawyer in Tisdale, Todd Parlee. Crown counsel asks Shepherd to comment on Edmondson's behaviour up to this point. Shepherd says "he's quiet, fairly – yeah, just – I would characterise him as just generally quiet" (Ibid: 61). Shepherd is then asked how he would describe his interaction with him during their conversation and he says, "he's – again, he's ver- he was generally quiet and responsive. His responses were generally short, not participating much in any conversation, but polite, and he was not uncooperative, and, and it was – that was generally, generally the feel of the situation" (Ibid: 61).

Constable Shepherd's depiction of Edmondson as both "quiet and responsive" sounds more akin to contradiction than to two complimentary descriptors (Ibid: 23-24, 61). That both Shepherd and Bohlken can portray Edmondson as being "quiet" and "not participating much in conversation" and at the same time "matter-of-fact" and "cooperative" puts a positive spin on what might also be a description of Edmondson as vague and non-responsive. There is an element here of an expected non-expressiveness, consistent with the imprecise articulation of heterosexual masculinity explored in the preceding chapter. However, what is evident here is how the normativity ascribed to non-expressiveness works to privilege Edmondson.

By the officers' own description, Edmondson is participating very little in the interview, and the arresting officers layer their interpretation over his lack of participation to mean cooperation. Edmondson is stoic, like the frontiersmen of yore.

Far from being uncooperative and unresponsive, his lack of expressiveness is “matter-of-fact.” This contrasts with Melanie’s articulation of events that will be taken up in the next chapter, which requires that she be exceedingly detailed, with any misstep taken to mean is she uncooperative at best, and wilfully deceptive and manipulative at worst.

In interviewing Edmondson, and in being questioned on the stand, Constable Shepherd displays an openness about what might have gone on during the evening in question. The manner in which Shepherd goes about questioning Edmondson to find out what happened from Edmondson’s point of view displays an element of disbelief that he, Edmondson, from a known family and with no prior run-ins with the law, would simply one day decide to sexually assault a twelve-year-old girl with his two friends, even if there is nothing inherently *wrong* with Shepherd having an openness about how and why Melanie ended up in Edmondson’s truck, and later, in the hospital. From Shepherd’s point of view, the bare facts are genuinely inconsistent with the context he has for Edmondson, and he maintains that in interviewing him, he was trying to establish on which side of chargeable/not-chargeable his actions were the night previous. In order to do this, Shepherd assumes a common ground with Edmondson and appeals to the common values of the white, family oriented, agricultural community of which he and Edmondson are members.

First, Shepherd appeals to their shared heterosexual masculinity in an effort to get Edmondson to open up about the sexual activity Melanie told Shepherd had happened when he took her statement earlier that day in the hospital. In so doing, Shepherd draws heavily on gendered stereotypes in an effort to bond with Edmondson, positioning himself as someone sympathetic to his situation. We hear

parts of the transcript from Shepherd's videotaped interview with Dean read into the record during Shepherd's cross-examination, including that he, Shepherd, "may be married, but he's not dead" (Ibid: 107). He comments upon "the way girls dress these days" (Ibid: 108) and clarifies to Edmondson that there are some "lapses in judgment that are excusable," while others are not excusable (Ibid: 111).

Shepherd is establishing with Edmondson that there is a spectrum of excusable and inexcusable lapses in judgement, one not amounting to chargeable conduct and another that is chargeable conduct. "That's the impression you're trying to leave with this young lad, to figure out whether this is chargeable conduct or not?" asks Hugh Harradence, Edmondson's defence lawyer. "True," Shepherd answers (Ibid: 113). Shepherd tells Edmondson he needs his side of the story in order to determine if he made some lapses in judgment that crossed over the line into an inexcusable lapse in judgment that would be chargeable conduct (Ibid: 112-113).

"But like I've been saying," Shepherd says to Edmondson, making reference to the fact that there are four people involved in this situation, "I really think, ya'know, if I was to be honest you're a quarter of the equation" (Ibid: 151). The transcription of Shepherd's voice portrays that of a down-home friendly cop who knows something wrong happened, knows Edmondson was involved, and tries to talk him back onto the 'straight and narrow'. Shepherd changes his mode of engagement and begins making appeals to what he assumes is their shared sense of community values:

...when you're in a jam, ya'know, your history and what you think in your head it comes into play. I know you know this is wrong I can tell, I can tell. You're not comfortable, you're probably a bit embarrassed, ya'know, an' I'm damn sure this isn't the way [that] you were brought up. . . And like I say I'm damn sure this . . . you

don't . . . weren't brought up [in] this way. If you were  
you'd be in here a helluva lot more.  
(Ibid: 151)

Both the defence and the Crown use this congenial description of Edmondson based on his history to make their case as to the admissibility of Edmondson's statement. The defence argue that police coerced Edmondson, and tricked him into speaking when his lawyer advised him not to, and thus his statement should be inadmissible (Ibid: 154-164). The Crown forwards that Edmondson was not coerced, but rather that police successfully appealed to what was 'true': Edmondson agreed to speak because of appeals made to his conscience as a young man from a good family, who felt a little bit embarrassed about having involved himself sexually with a young Indigenous girl (Ibid: 147-153). Constable Shepherd and Corporal Bohlken assist the Crown in developing this perspective, stressing in their testimony what they explicitly and implicitly believe to be the case about Edmondson. The officers have a context for Edmondson as a nice young man from a nice family in the local community, and this is treated as a rare, one-off situation in his life from the outset. They do not believe he is a risk to the community, and their interest in questioning him is to establish whether his individual actions crossed the boundary from possibly immoral but not chargeable conduct, to chargeable conduct (Ibid: 89, 112, 113).

Defence counsel in *R v Edmondson*, Hugh Harradence, suggests to Shepherd in cross-examination that he was attempting to exhort a statement from Edmondson when he already knew he was going to charge him.

Harradence: So, was the fact that whether he was going to  
be charged or not, was that going to be determined on  
whether he gave you a statement or not?

Shepherd: No, not solely.

...

Harradence: So, was it dependent on you getting his side

of the story as to whether he was going to be charged?

Shepherd: No, not solely.

(Ibid: 118)

Harradence suggests that Shepherd intimated to Edmondson that if he talked, then this might all go away and he would not be charged (Ibid: 117-119). Shepherd insists that was not the case, and it was merely the case that he did not know whether he was going to charge Edmondson or not. Despite being the one to take Melanie's statement earlier that day in the hospital, despite the doctor who examined Melanie the night before affirmatively identifying that "something awful" had clearly happened, and despite Melanie's clear identification of Dean, and Dean's confirmation that he and two friends had been with a young Indigenous girl they did not know in his silver truck the night before as Melanie had described, Shepherd says he honestly did not know whether any 'chargeable' conduct had taken place the night before. He needed Edmondson's side of things to help make a determination. Shepherd tells Harradence under cross-examination that it was not meant to be an inducement, and he merely "conveyed to him [Dean] that I would like his side of the story; I had hers, I would like his" (Ibid: 118).

Harradence puts forward that there were other elements of coercion that ought to make Edmondson's statement inadmissible, including bail that Harradence says could be interpreted as Shepherd "holding something out to the accused" in exchange for him offering up a statement (Ibid: 155). For the purposes of this chapter, Shepherd's conversation with Harradence about bail demonstrates how Edmondson is constructed as a community insider, and how this works in his favour. Harradence tells the court that during the videotape of Shepherd questioning Edmondson, Shepherd alludes to the fact that he and Edmondson had spoken earlier

about bail (Ibid: 87). Shepherd said in the videotape, “you asked about bail,” but the particulars of that earlier conversation, which would have taken place either en route to the detachment or upon arrival at the detachment before the video camera was on, are not recorded in evidence in any way (Ibid: 155-156).

The prior conversation is absent from the videotape, and Shepherd’s notebook makes no reference to any conversation about bail. Shepherd tells Harradence that he does not recall talking to Edmondson about bail even though it is clear from the context of the videotape that they must have. “It would be fair to suggest, sir,” Harradence asks, “that given your experience of over ten years, when you arrest someone, they ask about bail” (Ibid: 88). Shepherd’s response is non-committal: “yes, some of the time.” Harradence pushes him further:

Harradence: Yeah. The majority of the time, or can you tell us, or you don’t really know?

Shepherd: No, I wouldn’t say the majority, just - no, I - I don’t know.

Harradence: Yeah. And, I take it, sir, that your response is never the same (inaudible) have to respond to the circumstances. Right?

Shepherd: Right.

Harradence: Yeah. And, so you don’t know what you said to Mr. Edmondson in the car or the detachment. You don’t know what you said to him.

(Ibid: 88)

In pressing the point that it is not known what Shepherd said to Edmondson, Harradence is trying to establish that the court does not have the information it requires to decide whether or not Edmondson had been coerced through promise of bail (Ibid: 155-156). Shepherd rebuffs Harradence with a recollection of what

seemed evident to him at the time.

Shepherd: Well, my recollection of the bail issue was that he brought it up and it was my opinion that, quite frankly, that he wasn't going to be held. He was known to me. He's known in the community. He lives in the community. So all the-

Harradence: Sorry, sir. Are you telling me now that you do recollect this conversation about bail?

Shepherd: I recall the conversation you and I had from the preliminary hearing.

Harradence: yeah, but I'm talking about the conversation you had with Mr. Edmondson on October 1st about bail.

Shepherd: I'm tell- I was just saying what was in my head as far as his question regarding bail, yes.

Harradence: You thought he was gonna get out.

Shepherd: I did.

Harradence: And, so you would've told him that.

Shepherd: I did, yes.

Harradence: "You will get out." Now, where did that conversation-

Shepherd: Whether I said "will" or- definitively, I can't say, but it was my opinion, had the decision been mine, that I would've released him.

Harradence: And, you would've freely told him that when he asked earlier on, obviously. Either in the car or at the detachment, you would've told him that. That was your opinion.

Shepherd: I doubt very strongly I would've said that definitively. I would've said, you know, what I just finished saying, that he was -he's known to the community, he's not a flight risk, and so on.

(Ibid: 88-89)

Dean is afforded the benefit of the doubt as a community insider. The police have



already constructed him as not a risk to the community, someone who will not be held, before having questioned him. Shepherd's clarity about such a decision regarding bail reflects, in part, Edmondson's status in the community, but it also reflects who his victim was. Had Shepherd visited a twelve-year-old girl also from their shared, white community, he may have made different assumptions about what Edmondson might have done. What Shepherd knows when he picks up Edmondson to question him is what an intoxicated, twelve-year-old runaway from an Indigenous background who is not from his community has told him. Even though there is a fair amount of consistency between what she said happened, and what Edmondson confirms as his whereabouts and his company, Shepherd struggles to make sense of what happened. It will be Edmondson's simple, "matter-of-fact" statement that comes to represent the 'truth' of what happened.

The position of the Crown for the admissibility of the statement containing Edmondson's version of events is that there was no coercion and no inducements made to get Edmondson to speak; it was merely the case, says Crown prosecutor Mr. Scott, that Shepherd managed to successfully appeal to "the accused's background and, and I'm suggesting that he, he's, appealing to the accused's conscience. . . appealing to what he thinks the accused would, would view is, is right in this particular circumstance" (Ibid: 151). Mr. Scott mentions eight times inside of a four and a half page concluding argument on why the videotaped statement ought to be admissible that Edmondson freely gave the statement because of appeals made to his "honesty," his "conscience" and his "character," with Shepherd making frequent reference to Edmondson's "background" (Ibid: 149, 150, 151, 153). This entrenches a notion of Edmondson as honest, conscientious, of good character and from a good

background. Regardless of how strongly Constable Shepherd felt these things to be the case when using them to appeal to Edmondson to give a statement, the Crown's argument solidifies them as statements that are true about Edmondson in order to distract from the possibility that they were a coercive technique on the part of Constable Shepherd.

In his decision on the admissibility of Edmondson's statement, Justice Kovach compiles a series of statements made by Shepherd in the videotaped interview as well as Shepherd's testimony on the stand to develop a coherent narrative about the circumstances of the case:

...this is out of character and I, ah, I don't think you're a bad guy; it's not like she's in terrible, terrible shape; I know you know this is wrong, I can tell, I can tell; I'm damn sure this isn't the way you were brought up; it's a lapse of judgement; lapses of judgement, to some extent, are excusable, aren't they; and basically what we're going to do is, we're gonna look at what each of you guys say and have a look at what she said and we'll look at the evidence as collected and make a determination.

(R v Edmondson, Vol. IV: 744-745)

Kovach is re-stating what he takes to be the salient portions from the videotape and the earlier testimony of Constable Shepherd in order to make a decision regarding whether the statement should be made admissible. The portions he chooses to emphasise are those pertaining to Edmondson's family background; that ending up in a police station seems out of character; that sometimes lapses in judgement happen; that there are multiple sides to any one story and; that Melanie is not in terrible shape.

Far from these statements being coercive on the part of Constable Shepherd, Justice Kovach takes them as representative of the 'truth'. Justice Kovach returns to

the initial descriptions of Edmondson's demeanour provided by Corporal Bohlken and Constable Shepherd in support of this version of reality as truth. He sees that these initial descriptions of Edmondson's demeanour substantiate the notion that everything asked of Edmondson was in fact an appeal to his conscience, good upbringing, and good character because he observed for himself what Constable Shepherd and Corporal Bohlken testified to: that Edmondson was cooperative, quiet, and matter-of-fact in his responses. Justice Kovach says Edmondson was described as "fairly quiet, polite and not uncooperative" by members of the RCMP, a description, he says, that "is generally confirmed by the videotape" he viewed of Edmondson's statement (Ibid: 744). Justice Kovach reiterates that Edmondson "appeared rather quiet and subdued throughout the interview" (Ibid: 745).

While Justice Kovach decides in favour of the Crown to include Edmondson's statement to police in the trial proceedings, the reason Justice Kovach gives for his decision are based on the established 'truth' of Edmondson's good character that will serve him well throughout his trial. Justice Kovach makes his decision based on the established reality that Edmondson is an intelligent, matter-of-fact, and pleasant young man from a good family (Ibid: 746). This is critical to the outcome of the trial, as it is Justice Kovach's voice that creates a coherent narrative of what has been presented in the court, from which he directs and advises the jury and makes decisions regarding the sentence he gives Edmondson. The established truth of Edmondson's overall good character is the starting point from which Kovach makes decisions about what seems reasonable, fair, and true. This will have a marked impact on the legitimacy of Melanie's counter-narrative, which will be explored in the next chapter, and also carries over into the portrayals of Edmondson's

friends and co-accused, albeit with slightly different emphases.

### Jeff Kindrat was 'quite emotional'

As mentioned earlier, Kindrat was outside the Tisdale RCMP's jurisdiction at the time he was arrested. He was working on a roofing job when Corporal Steven Smith from the Carrot River detachment arrived to collect him for questioning. Corporal Smith knew Kindrat. They had met the summer before the arrest (*R v Brown and Kindrat*, Vol. I: 11). Smith took Kindrat aside and explained he was under arrest for sexual assault. Crown counsel asks Corporal Smith to describe Kindrat's demeanour. He portrays Kindrat in a favourable light, echoing the same lack of concern regarding Kindrat's risk to the community as was present in Constable Shepherd's arrest and questioning of Dean:

Corporal Smith: I would say he was – he was concerned. He was very polite and cooperative. I didn't handcuff him or anything.

Scott: Okay.

Corporal Smith: (INAUDIBLE)

Scott: Why was that?

Corporal Smith: I've dealt with him before, and he was – I didn't think there was a need.

(Ibid: 18)

Corporal Smith was to drive Kindrat to meet Corporal Bohlken and Sergeant Homeniuk from the Tisdale detachment at a pre-arranged meeting point on the highway between Zenon Park and Tisdale. He advised Kindrat of his rights and read him the police warning, as required, and then asked him "Jeff, did this happen last

night?” and “You were with Jeff Brown and Dean Edmondson?” Kindrat said “yeah, we just picked up this girl” (Ibid: 1). “That was his response?” Crown counsel asks. “Yes. Then I – then I said, ‘Jeff, you should wait and speak to the Tisdale Members about – about this. You can tell them your side of the story.’” (Ibid: 16). Similar to *R v Edmondson*, in *R v Brown and Kindrat*, the process through which Kindrat’s statement to police is deemed admissible sets the precedent for who Kindrat is and what is considered reasonable to assume about his intent and his behaviour on the 30<sup>th</sup> of September 2001.

Like Edmondson, Kindrat is also well-known, well-liked, and from a good family, but in addition to this, he knows many of the RCMP officers involved personally through his community involvement, including playing on sports teams with some of them. The recently retired sergeant of the Tisdale detachment even testifies as a character witness for him. The officers who were involved in arresting or questioning Kindrat make mention of their personal knowledge of Kindrat outside of this case, and actively add dimension to Kindrat’s character in court as a caring, concerned, and sensitive young man who is a pillar of the Tisdale community - an athlete, and the high school valedictorian.

As mentioned earlier, there is little of Kindrat’s own voice in his trial, as he does not testify. Where Edmondson is called to testify in *R v Brown and Kindrat*, and Brown is called to testify in *R v Edmondson*, Kindrat avoids ever having to testify. Even in reading the two trials together, Kindrat’s voice is markedly absent. He is on the Crown’s list of witnesses in *R v Edmondson*, but he is dropped at the last moment. The reason for this is not made explicit, though there is allusion made to it being for reasons of finishing the trial sooner rather than later with mention of

wanting to ensure members of the jury can return to their regular lives as soon as possible (R v Edmondson, Vol. III: 562-567). Kindrat is acquitted on all charges in 2003, and then again in his 2007 re-trial.

Kindrat readily acknowledges to Corporal Smith that he and his friends picked up the young Indigenous girl that Smith knows is still recovering in the Tisdale hospital when he picks up Kindrat. Corporal Smith echoes the advice provided to Edmondson by Constable Shepherd in advising Kindrat to tell his side of the story. Corporal Smith's advice seems clearly genuine given his context as a friend who says he has known Kindrat for a long time. Kindrat is receiving advice from someone he knows who is telling him to "speak to the Tisdale Members about this" (R v Brown and Kindrat, Vol. I: 16). Corporal Smith's tone does not suggest Kindrat is being taken to Tisdale to be put into an interrogation room as much as it suggests that Kindrat is going to Tisdale to receive counsel from the RCMP and maybe help them make sense of how he and his two friends found themselves with Melanie and how she ended up in the hospital.

Sergeant Homeniuk, the highest ranking officer at the Tisdale detachment, testifies to the particulars of the handover. He confirms that he does not handcuff Kindrat either when putting him in the back of his police vehicle (Ibid: 30). He is asked if he had any conversation with Kindrat.

Sergeant Homeniuk: No, I did not.

Scott: Mr. Kindrat, had you known him prior?

Sergeant Homeniuk: Yes, I - - I've known him for a while now.

(Ibid: 27)

The degree to which Kindrat is known and connected to RCMP officers involved in

his arrest provides the fodder for Kindrat's lawyer, Stuart Eisner, to argue that Kindrat's statement should be inadmissible. Eisner suggests that under the circumstances, Kindrat did not know he was giving a statement when Corporal Bohlken began questioning him in an interrogation room (Ibid: 57). The evidence for this, argues Eisner, is that Kindrat declined the offer to call a lawyer (Ibid: 49). Had he clearly understood that he was giving, or about to give, evidence to the police, Eisner argues, Kindrat would have seen the need to take advantage of the phone call he was offered to get in touch with a lawyer (Ibid: 56-63).

Kindrat did not see a need to phone a lawyer, Eisner contends, because "there is no evidence to suggest that he's about to be interrogated or any attempt to gather evidence is going to occur" (Ibid: 57), despite the fact that by the time the conversation between Corporal Bohlken and Kindrat takes place, in which Kindrat refuses his phone call, Kindrat has been arrested for sexual assault. He has also been read his rights and given the police warning twice - by Corporal Smith upon his arrest and by Corporal Bohlken at the handover - during which the highest ranking member of the RCMP in the area, Sergeant Homeniuk, has guided him to the backseat of the police vehicle, and Kindrat is at that moment sitting in a police interrogation room.

Eisner is attempting to argue there was a procedural error on the part of the police that confused Kindrat as to the nature of his situation. Justice Kovach, siding with the Crown, does not believe the police erred in their procedure, and Kindrat's videotaped statement is deemed admissible. Eisner is struck down in trying to identify a procedural error that accounts for Kindrat's out-of-the-ordinary decision-making during his arrest and interrogation, but Eisner has nonetheless identified a

degree of confusion where Kindrat seemed not wholly aware that he was being interrogated as to his involvement in a sexual assault, owing to his personal relationship with the officers. Kindrat refused the offer for a phone call, refused the offer for a lawyer, and reportedly spoke readily, through bouts of crying, about the events of the night previous. His statement is the only one of the accused in which he affirms he believes his co-accused did have intercourse with Melanie, which makes his being dropped from the witness list at the last moment by the Crown in *R v Edmondson* unfortunate, especially because the reason alluded to was time constraint, though the trial took up only eight days of the two-week period allotted for it.

What is most evident in the discussion surrounding the admissibility of Kindrat's statement is the emotion he felt, and the level of embarrassment he had in talking about what happened. As referred to in the previous chapter introducing Kindrat, it was put to Corporal Bohlken during cross-examination that "this appeared to be an emotional time for this young man as he spoke to you," to which Bohlken responds, "once he - he had stated to me that, in fact, there had been sexual contact, then yes, he was quite emotional, or appeared to be emotional" (*R v Brown and Kindrat*, Vol. I: 144). Bohlken repeats later under continued cross-examination from Eisner that Kindrat appeared "worried, troubled obviously" (*Ibid*: 151). Kindrat's level of discomfort, his embarrassment and his tears create a sympathetic portrayal. His shame about the events serves to obfuscate the violence that happened to Melanie and Kindrat's responsibility for what happened. Whereas for Edmondson, his imprecise articulation is part of a straightforward, 'matter-of-fact' demeanour, for Kindrat his imprecise articulation is due to his emotion, which garners sympathy.



This again contrasts with Melanie's imprecise articulation, also spoken through emotion, which does not arouse interpretive sympathy, but rather becomes a source of frustration in the courtroom: she is asked continually to speak more, to speak with more specificity, and to speak louder.

Kindrat was concerned, surely, but not about Melanie. Kindrat's first account of events to police is that he thought Melanie might have been sexually assaulted because she was acting quite strangely. He recounts that they saw her on the steps of the hotel and she looked sad, so they offered her a ride and some beer. They drove from Chelan to Mistatim, where they picked up more beer and snacks for the road. After leaving Mistatim, he says,

. . .then she was like, I don't know, she would, she, every once in a while, she would start screaming. . . She was saying ouch, ouch, ouch, ouch, ouch, and then she'd be holding herself like in her genital area and like, we're like, well, what's wrong, what's wrong, what's wrong, and she was like, no, nothing, something that happened earlier today.

(Ibid: 111)

Kindrat's description mirrors what Gary Pierce and his son Jesse describe to the court as Melanie's demeanour when she was dropped off by the three accused at their home. That is, screaming and holding herself between her legs. Kindrat eventually breaks down and admits to the police that sexual contact had occurred between himself, Edmondson, Brown and Melanie. However, this first explanation as to how Melanie ended up in hospital as a result of having been sexually assaulted by someone else before they encountered her is not read as a deliberate lie. With DNA evidence that suggests Melanie's father had been sexually abusing her, Kindrat's initial rendition instead becomes evidence that her father is that 'someone else'.

The distraction of Melanie's alleged abuse by her father (which was being actively investigated by Constable Degruhy during the trial proceedings) creates the opportunity to re-write her father as the 'real' culprit, consistent with what Andrea Smith and Sherene Razack say about re-constructing Indigenous men as the true perpetrators as discussed in chapter 3.<sup>1</sup> In sentencing Edmondson, Justice Kovach sees a consistency across the accounts of the accused, the consistency being that they all say that Melanie was acting strangely, that she was sexually aggressive, and that Kindrat even speculated she had been sexually assaulted earlier that day (R v Edmondson, Judge's Sentence: 12). Far from these being understood as self-serving accounts of what happened so as to mitigate their own blame, they are taken to represent some consistent truth about Melanie's difference, which emanates from her home and communal dysfunction. Smith says this kind of distraction "serves to obscure who has the real power in this racist and patriarchal society."<sup>2</sup>

In addition to his personal relationship with many of the RCMP officers in the local area, Kindrat's status as a community insider is also established in the trial narrative by a series of character witnesses. As the only one of the accused to never speak in either trial, these voices replace Kindrat's. In addition to testifying to arresting and charging Kindrat, previous members of the RCMP also testify on behalf of Kindrat. Sergeant Michael Thorpe was the highest ranking member of the RCMP in Tisdale until he retired in 1999 and was replaced by Sergeant Homeniuk, who testified earlier to knowing Kindrat personally. Sergeant Thorpe tells the court he has known Kindrat in a social capacity since 1992. He confirms that Kindrat is "held in high regard" in the community (R v Brown and Kindrat, Vol. III: 645). Crown

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<sup>1</sup> Smith, *Conquest*, 27; Razack, *Looking White People in the Eye*, 58–60.

<sup>2</sup> Smith, *Conquest*, 27.

counsel and Kindrat have a friend in common with retired Sergeant Michael Thorpe. Parker's cross-examination of 'Mike' begins in a light, playful manner with Parker quipping "you look familiar" (Ibid: 646). Parker asks the Sergeant to reflect on how sometimes young people from whom you would not expect such behaviour are led astray.

Parker: And in fact, Mike, is it also fair to say that even though you're a police officer with years of experience, you can't predict which people of good character are going to sometime go astray?

Thorpe: No, I can't.

Parker: And one thing that you do know from police work though is that which helps people go astray is alcohol consumption?

Thorpe: Yes, I do.

Parker: And secondly, the misbehaviour of others who go before the individual; is that also correct from your experience, sir?

Thorpe: Yeah, it is correct.

Parker: Thank you, Mike.

(Ibid: 646)

Alcohol consumption and peer pressure are what Parker puts to Sergeant Thorpe to be the cause of any of Kindrat's misdeeds. The jury also hears from Kindrat's former high school teacher and football coach who tells the court he sees Kindrat "about the community since his graduation" (Ibid: 640). As the local football coach and winner of the 1998 Saskatchewan Roughrider Amateur Football Presentation that recognises individuals who have made a substantial contribution to the development of amateur football in the province, William Zorn is a well-respected member of not only the Tisdale community, but also the province of Saskatchewan.

Eisner: And could you indicate to the court what is Jeffrey Kindrat's general reputation in the community for honesty, integrity and morality?

Zorn: I would say his - - it's been excellent.

Eisner: Okay.

Zorn: A little nervous here. I - - if I can just make one other comment. When - - when - - when Jeffrey came to Tisdale, he was in grade 11 when he came to high school in Tisdale, and - - and subsequently he was - - two years down the road when he graduated, he was elected valedictorian of his class, and I think that says something about the positive nature as his peers would - - would regard him, so - -

(Ibid)

The Crown does not contest this construction of Kindrat and asks Mr. Zorn "not for one moment would you think that Mr. Kindrat would be the first to do this sort of behaviour, the first of three; correct?" Mr. Zorn responds, "not for one moment".

Parker: But you're aware that men sometimes follow other men when they're led astray, from your experience dealing with young men?

Zorn: As - - as a teacher is there such a thing as peer pressure? I would say so, yes.

(Ibid: 640-641)

Like alcohol consumption, peer pressure is stated as a factor that could explain how Jeff Kindrat became implicated in such an ugly situation. The legitimacy of these activities as established in the preceding chapter, however, means that they only serve to mitigate Kindrat's personal responsibility as opposed to make him more responsible for drinking too much and succumbing to peer pressure. Nor does his portrayal as having followed someone else result in anyone else being named as the leader. That the actions of each of the accused are parsed out as they are results in

these kind of phantom references to the others, reimagining each of them as more culpable, without any of them actually being held accountable for the severity of a group assault on Melanie.

This micro level individualisation is analogous to the macro level individualisation where circumstances and realities of oppression and privilege can be acknowledged (residential schools happened, for example) but who is responsible and what it would mean to take responsibility exists in the same abstract, phantom-like space in the broader white settler society.<sup>3</sup> In the trials, Melanie bears the brunt of her attackers' responsibility being mitigated through the individualisation of their actions, and so too do Indigenous communities at large bear the brunt of settler colonialism's violence in a social and political context fixated on individual responsibility. Without assessing the collective context in which events and actions occur, the interlocking systems of domination remain invisible against a backdrop upon which no individuals can be directly blamed and held accountable.

Garry Mutch, the vice principal at Kindrat's elementary school and grade 11 and 12 mathematics teacher also testifies on his behalf. More than referring to acceptability of young men drinking to excess and sometimes succumbing to peer pressure, Garry Mutch draws a boundary around 'the community' the accused are a part of. The defence asks Mr. Mutch as to "Jeffrey Kindrat's general reputation in the community for honesty, integrity and morality".

Mutch: As to Jeff's reputation in the community, I've known him all my life, he is a responsible young man. He has - - he has always been a leader in school. He's caring. He comes from an excellent family, and also from a community that cares about - - about their young people. I - - I never knew Jeff to be a bully.

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<sup>3</sup> Regan, *Unsettling the Settler within*.

(Ibid: 643)

He continues, “his character and reputation are, in my opinion, the highest” (Ibid). Not only is Kindrat as an individual held in the highest esteem, but he is from a good family and a good community that takes great care of its young people. There is a clear contrast with what is said about Melanie’s family and her community in the courtroom who are portrayed as abusive, dysfunctional, and circumspect, as explored more fully in the next chapter.

In attaching Kindrat’s overall good character to the broader context of a good family and a good community, responsibility for the dysfunction of what happened between the three men and a twelve-year-old girl is re-written as emanating from the dysfunction inherent in her, her family, and her community. Parker’s recourse to Mr. Mutch’s glowing testimony is to ask whether he had ever observed Kindrat’s behaviour when intoxicated. He had not. The perspective from within the dominance of the settler community does not leave space to consider the systemic pattern of male settler violence against Indigenous women, all too often excused as individual, irresponsible behaviour, fuelled by no more than alcohol and peer pressure. The broader context in which alcohol consumption and peer pressure to sexually assault a twelve-year-old Indigenous girl are normalised, however, is unquestioned and is part of maintaining blindness to settler colonial privilege. Jeff Brown’s statement and contradictory testimony demonstrates the power of blindness most clearly.

## Jeff Brown 'saw a bunch of things going on'

While Jeff Kindrat is the most forthcoming when he eventually concedes that he and his two friends had sexually involved themselves with Melanie the night previous, Jeff Brown is the least forthcoming. He readily pleads confusion and sticks to a storyline of denying that anything of a sexual nature happened until he is on the brink of perjuring himself when subpoenaed to testify in *R v Edmondson*. Constable Charles Degruichy was the first to attend to Melanie in the Tisdale hospital the night of the assault, ordered the sexual assault kit, and assisted Dr. Somer in administering the sexual assault kit. When Degruichy came back on shift the following afternoon, he was dispatched to Lesell Allan to question Brown. Brown was just finishing up his shift when Degruichy arrived. Degruichy describes the situation as follows:

It wasn't anything out of the ordinary. He was at work, was - - I came to - - to find him. He said "Hi," if I remember correctly, and I mentioned that I needed to speak to him on some events that occurred the prior evening, and he - - he came. There was no - - it wasn't - - like I said, he didn't appear to be out of the ordinary.

(*R v. Kindrat and Brown*, Vol. I: 186-187)

What is particularly 'ordinary' to Degruichy about finding a young man where he works and questioning him about a report of sexual assault is not clear. This description of events, nonetheless, has the effect of lumping Brown into the same category as the other two accused as 'just an ordinary guy at work'.

Brown walks back with Degruichy to his police vehicle, is read the police warning and advised of his right to counsel. Like Kindrat, Brown declines his right to counsel and Degruichy proceeds to ask him a few questions about what happened the night previous. Brown's statement was not videotaped. Degruichy records

Brown's answers on a generic RCMP questioning form, which he and Brown both sign. Brown's lawyer, Mark Brayford, does not contest the admissibility of Brown's statement, which is read aloud in the courtroom by Constable Degruchy so that it might be admitted into evidence. Unlike the statements given by Edmondson and Kindrat, Brown's statement is thus present in full in the court transcripts as opposed to only by way of quotations, pulled from the statements of Edmondson and Kindrat, referred to by counsel or Justice Kovach. Brown's lack of engagement in the whole trial process as mentioned earlier is met by Degruchy's seeming impatience with getting to the bottom of what happened. Edmondson and Kindrat have long, involved conversations with the officers questioning them, whereas the exchange between Brown and Degruchy is very brief and straight to the point.

Brown's statement to police describes Melanie as "a short native girl" who, drunk, was sitting outside of the bar, and approached them for a ride (Ibid: 193). This is one of very few times Melanie's race is directly mentioned (though it may have been in the statements of the other accused and not read into the court record), and it is in the context of her being a drunk native girl outside a bar. Degruchy asks Brown if he could "smell an odour of liquor on her" but Brown does not remember. Degruchy then gets straight to asking about the alleged assault.

Constable Degruchy: Did any type of sexual activity go on in the truck? Be honest.

Brown: Not that I know of, I did not see anything.

Constable Degruchy: Did the truck stop at anytime during your travels with her in the truck?

Brown: She threw up in the truck. We stopped on the highway so she could puke.

Constable Degruchy: Do you know if Jeff (Kindrat) had



intercourse with her?

Brown: No. I think I would have seen or heard something.

Constable Degruchy: Did she offer sexual favours for a free ride?

Brown: No.

(Ibid: 193-194)

Constable Degruchy asks Brown if he knew why the girl they picked up was in Chelan in the first place, and he says that she had told them throughout the course of the evening that “she was partying with friends and her boyfriend they ditched her” (Ibid: 195). Degruchy goes back to asking about the alleged assault.

Constable Degruchy: So, as far as you know, nothing of a sexual nature occurred?

Brown: No.

Constable Degruchy: You did not have sex with her?

Brown: No.

Constable Degruchy: Dean?

Brown: No.

Constable Degruchy: Jeff?

Brown: No.

(Ibid: 195)

After Brown has said multiple times that he did not see anything of a sexual nature occur and was not involved in anything of a sexual nature, Degruchy asks if he, Edmondson and Kindrat were drunk. He tells Degruchy he only had about five or six beers that night so no, he was not drunk, and neither was Edmondson. But Brown later testifies in Edmondson’s trial that he consumed between twenty and

twenty-four beers inside of four hours, from 18h00 to 22h00 on the night in question, which is when Crown counsel asks if there was “any particular reason for your drinking that type of quantity on that particular day?” As already established, Brown explains he was upset because his grandmother had passed away that day (R v Edmondson, Vol. III: 418).

Following this line of questioning, Mr. Parker requests that he be allowed to cross-examine Brown. The discrepancy between his statement and his testimony as to his level of intoxication is the final inconsistency amongst what Parker sees to be multiple inconsistencies from his statement to his testimony. It is generally agreed that the level of intoxication of the three men changed from the statement to the testimony, Brown admitting to a much higher level of intoxication while on the stand. However, whether or not he lied to Degruhy when he was asked if Jeff Kindrat had intercourse with Melanie (to which he had responded “no. I think I would have seen or heard something” in his statement, as above), and whether or not it constitutes an inconsistency that he told Degruhy they only stopped so Melanie could throw up without mention of stopping to engage in sexual activity with Melanie, is not as straightforward in Justice Kovach’s eyes (R v Brown and Kindrat, Vol. I: 193-194 and R v. Edmondson, Vol. III: 446). Mr. Parker, quoting from Brown’s written statement, argues the following:

Parker: . . . today, with respect to Jeff and intercourse, he tells us that Jeff tried and Jeff's pants were down.

Justice Kovach: But, that - yeah, but - "Do you know if Jeff had intercourse with her?" His answer today - what exactly was his answer today to that question?

Parker: Well -

Justice Kovach: He doesn't know. He didn't. If I - his

answer was he didn't, for sure, and he, he either said he didn't know or didn't think anyone else did. Is that not correct?

Parker: With respect, My Lord, what he, what he's indicated – I appreciate – it's this, My Lord: In this, he says, "I would've seen or heard something." In other words – what does he mean by that? "I saw nothing with respect to intercourse." Today he said it was tried, it was attempted, and surely that's a major and absolute clear inconsistency, with respect. Because – to answer your question – what he said today is Jeff's pants – I think he said Jeff's pants were down, half-way down or something, and Jeff was behind her. Did they have – this isn't a rape case, My Lord. I'm not concerned with penetration.

Justice Kovach: No, but that's what the statement says though and you're trying to convince me that there's a contradiction in what he said today with what he said at – like, neither you nor I had any input into how the questions were worded, but the specific question was there, "Do you know if Jeff had intercourse with her?", and the answer he gave at that time was, "No. I think I would've seen or heard something", and presumably he means if they'd had intercourse because that's what the previous question was.

Parker: Right. Right.

Justice Kovach: Now his ques- his answer today is, he doesn't know if they, had intercourse. Like, he knows what – he saw a bunch of things going on.

(R v. Edmondson, Vol. III: 447-448)

Brown has held onto this line from the very beginning that he did not see much and that he was not particularly sure what happened. While Parker is suggesting there is something dishonest about Brown's divergent account of events between his statement to Degruy and his testimony, Justice Kovach is much more willing to give Brown the benefit of the doubt because there was "a bunch of things going on" and the court cannot expect that Brown would know for certain whether or not anyone succeeded in having intercourse with Melanie.

It is reasonable to Justice Kovach that from Brown's vantage point he would not have been able to see whether or not intercourse (that is, if Kindrat or Edmondson had succeeded in penetrating Melanie) occurred. Justice Kovach takes a very narrow, pedantic view regarding whether or not Brown saw or knew of sexual intercourse occurring, rather than just sexual activity more broadly, which seems unnecessary given the Crown's position that they are not concerned with proving penetration.<sup>4</sup> Even still, Brown told Degruhy he figures he would have seen or heard something, which he clearly did based on his testimony, it just was not the precise moment of penetration. Parker tries to assert that Brown's blindness was wilful in saying he did not see anything going on, but Justice Kovach is unwilling to believe that to be the case.

Fitting Brown's character established in the preceding chapter as not very bright, it works to his advantage here where Justice Kovach is willing to believe that Brown was not wilfully blind. Rather, Brown saw a "bunch of things going on" and simply did not precisely articulate what it was. There is also an element here that refers back to what was discussed as homosocial male bonding and normative heterosexuality in the preceding chapter.<sup>5</sup> Brown's lawyer, Mark Brayford, was shown to lead Edmondson in a dialogue about being too busy with Melanie himself to be concerned with what anyone else was doing with Melanie (*R v Brown* and

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<sup>4</sup> It is worthwhile to note that charges pertaining to sexual assault in the Criminal Code of Canada do not differentiate "rape" and "sexual assault", pursuant to changes made in the 1980s that removed "rape" from the vernacular of the Code in recognition of sexual assault not being just an act of penetration. It was surprising to read the Crown's words - "this isn't a rape trial" - especially so late in the proceedings. Where rape is no longer an actual legal term in Canada, it sounds to the layman's ear that the Crown is diminishing what happened to Melanie. See: Ehrlich, *Representing Rape*.

<sup>5</sup> See: Horvath and Woodhams, *Handbook on the Study of Multiple Perpetrator Rape*; McNinch, "'I Thought Pocahontas Was a Movie': Using Critical Discourse Analysis to Understand Race and Sex as Social Constructs"; Sanday, *Fraternity Gang Rape*; Razack, "Gendered Racial Violence and Spatialized Justice: The Murder of Pamela George."

Kindrat, Vol. III: 621-622). Likewise, Brown was present while his two friends were allegedly attempting to have intercourse with Melanie but Justice Kovach has no expectation that Brown, as one of three heterosexual men attempting to have intercourse with the same twelve-year-old girl on a deserted dirt road, should really know what the other two men were doing.

## The story so far

Building on ideas of imprecise articulation and the normalcy of the accused's activity from the previous chapter, this chapter has thus far given a focussed, chronological account of how the accused's status as community insiders afforded them privilege in the courtroom. All three are portrayed by the arresting officers as young men of good character from good family backgrounds. It is a reality that Justice Kovach hangs onto as objective truth about the accused in his decision making in the courtroom. Unable to destabilise the 'truth' of the accused as nice young men acting in accordance with accepted norms of settler colonial masculinity, the Crown too, looks to the sexual assault perpetrated against Melanie as anomalous in the lives of the accused.

The Crown's only method of countering this portrayal is to rely on familiar tropes in multiple perpetrator sexual assaults of alcohol consumption and peer pressure as the cause of the accused's collective temporary lapse in judgment. However, the Crown's portrayal of events as such is what leads Justice Kovach to muse in his sentencing that the Crown believes the assault was "tantamount to gang rape," which does not ring true to him for racialised reasons explored in the preceding chapter (R v. Edmondson, Judge's Sentence: 3). Also explored in the

preceding chapter was the extent to which alcohol consumption becomes a scapegoat for the accused as part of normative behaviour. For the accused, alcohol consumption is part of belonging. For Melanie, it is a point of differentiation.

### **C. The source of difference: Locating Melanie as an outsider**

Gary Pierce received a phone call from one of the accused who told him he had “picked up a hitchhiker and she was drunk and all she could say is ‘three-four-eight-four’ and ‘Jesse’,” the last four digits of the Pierce’s phone number and the name of Gary Pierce’s son (*R v Edmondson*, Vol. II: 365). All phone numbers in the town of Tisdale start with the same first three digits and Melanie giving the last four digits is all the accused needed to get in touch with the Pierces. Gary tells the court that he thought it was his son’s girlfriend. He told Jesse “his girlfriend must be coming and she’s drunk and he [Jesse] says it couldn’t be his girlfriend ‘cause she doesn’t drink” (*Ibid*: 367). In *R v Brown and Kindrat*, Gary relays that he told Jesse “I think your girlfriend is coming and she’s drunk,” and asked Jesse for her phone number so he “could phone her mom to come pick her up” (*R v Brown and Kindrat*, Vol. III: 567-568). The Crown asks, “and what did you learn from Jesse?” Gary learned “that his girlfriend didn’t drink, so it couldn’t have been his girlfriend” (*Ibid*: 568).

Gary says he called Jesse’s girlfriend anyhow, who was also a close friend of Melanie’s. In *R v Edmondson*, Gary does not relay his conversation with Jesse’s girlfriend but tells the court he “asked her to phone the RCMP and let them know that there was a girl being dropped off at my place, and I went outside and the truck pulled up” (*R v Edmondson*, Vol. II: 367). Gary says he learned from phoning

Jesse's girlfriend, Kori, that it was probably "Melanie, and she had run away from home, and the cops were looking for her" (R v Brown and Kindrat, Vol. III, 568). He asked Kori "to let the cops know she was at my place" (Ibid). Gary describes a scene in which his son and his son's friend Mike helped a "not able to stand when she got out of the truck," "not really all there," "weak-kneed," holding her hands between her legs and shoe-less Melanie from the truck (R v Edmondson, Vol. II, 368-369).

They handed Gary her knapsack and her shoes, which they cautioned might have vomit on them because she had been "throwing up all the way into town" and Gary says one of them "shook my hand and thanked me for taking her off their hands" (Ibid: 370-371). Once inside, Melanie had a glass of juice and then needed to be assisted again by Jesse and Mike to the washroom to throw up. Gary says "she seemed scared" and "she was slurred speeches and she wasn't making much sense to me" (Ibid: 372). He reports Jesse came out of the washroom and told him and his wife that Melanie said she hoped she was not pregnant. Gary relays that his wife said "we better get her to the hospital," and so Jesse and Mike helped Melanie again into the vehicle, Gary got in touch with the RCMP to let them know where they were headed, and drove Melanie to the Tisdale hospital (R v Brown and Kindrat, Vol. III: 573).

The narrative produced by the defence was that Melanie was an alarming imposition on the Pierce family - that it was an irritation, and certainly something very unusual that a drunk Indigenous girl might be dropped off at their house. In *R v Edmondson*, Harradence makes a concerted effort to reinforce how unusual the circumstances of that evening were for the Pierce family.

Harradence: You can't really give us a precise time that she stayed there.

Gary Pierce: No. I don't - you don't look at time when something's happening like that.

Harradence: This is not something that was happening at your house on a regular basis.

Gary Pierce: No. No.

Harradence: So, it was something unusual-

Gary Pierce: Yeah.

Harradence: -for you. Is that correct?

Gary Pierce: Yes.

(R v Edmondson, Vol. II: 380)

Harradence's subtle addition of "for you" invites that the circumstance of an intoxicated twelve-year-old Indigenous girl being dropped off at someone's house might be less unusual for someone else. Like, for example, and Indigenous family such as Melanie's. Through the course of Gary and Jesse's testimony in the two trials, it is clear that the defence is situating Melanie as the source of difference. It is Melanie's physical body in the 'normal' white settler space of the Pierce family home that is the "something unusual" that visited the Pierce's on the 30<sup>th</sup> of September.

### **Melanie as the source of unusual circumstances**

Kindrat's lawyer, Eisner, asks Gary Pierce if Melanie would have known that he was phoning the police when she arrived. Gary responds no, Melanie would have been in the washroom throwing up. Eisner's idea is that the RCMP were coming to relieve the Pierce family of Melanie's imposition, and that Melanie would have been



agitated knowing the police were coming for her. Eisner follows up quickly with “Melanie became more agitated the longer she was at your place?” Gary Pierce asks, “Agitated?”

Eisner: Yeah.

Gary Pierce: In pain, I’d say in pain, not agitated.

Eisner: How about anxious, is that a-

Gary Pierce: No. She - I think she wanted to get to the hospital.

(R v Brown and Kindrat, Vol. III: 583)

Eisner’s brief cross-examination finishes with asking Gary Pierce about his wife’s contact or involvement with Melanie. He tells Eisner when asked about the extent of her contact with Melanie that it was “just observation” (Ibid). Brown’s defence lawyer, Mr. Brayford, wastes no time mincing words in his cross-examination, immediately following on from Eisner. If there were any doubts as to what was being implied by Harradence and Eisner, Brayford makes it clear by guiding the dialogue between he and Gary Pierce with a firm hand:

Brayford: Sir, the phone call comes that these men have an intoxicated young lady with them, and you’re not impressed, are you?

Gary Pierce: No, not really.

Brayford: You have, in your own mind, formed the opinion that it’s your son’s girlfriend?

Gary Pierce: Yes.

Brayford: And you speak to him about that, your wife becomes aware of this to?

Gary Pierce: Yes.

Brayford: And she’s not impressed either?

Gary Pierce: Not really, no. It's ten to ten at night, and there's school the next morning.

Brayford: So when she gets to your house and she's at the house, and she's in the bathroom, you got on the phone to see if the police were going to come and-

Gary Pierce: The police were coming, yes.

Brayford: - get here and -

Gary Pierce: I couldn't get a hold of anybody except for the P.A. District.

Brayford: And you wanted the police to take this young lady off your hands?

Gary Pierce: Yes.

(Ibid: 584-585)

Brayford changes the emphasis from one in which the police were called because a child who had been reported missing was being dropped off at Gary's house, to one in which the police were called to rid Gary and his family of a nuisance that had presented itself late on a school night. The role of the RCMP in Brayford's heavy-handed cross-examination is to facilitate Melanie's removal from the otherwise 'normal' white space of the Pierce home in Tisdale. Brayford reuses the same phrasing that Gary Pierce introduced when telling the court that the three accused thanked him for taking Melanie "off their hands" before driving away (Ibid: 569). Brayford reusing this phrasing situates blame within Melanie as the source of the problem, and those she came into contact with that night were trying to rid themselves of responsibility for her. Far from being a victim of a horrific and violent crime in need of care and attention, Melanie is depicted as "an intoxicated young lady" who was given a ride by the accused, then passed on to the Pierces when she

started throwing up in Edmondson's vehicle. Through Brayford's leading questions, the Pierces were then seeking to pass Melanie off to the authorities.

Like the accused, the Pierce family are known members of the Tisdale community. In *R v Edmondson*, the Crown asks Constable Degruhy if he knows the individuals who brought Melanie into the hospital and he replies "I've known them pretty much since being transferred to Tisdale. They're mem- people of the community" (*R v Edmondson*, Vol. II: 291). There is an evident connection between Melanie and the Pierces in that she asked the accused to drop her off at the Pierce home and the court knows that Gary's son, Jesse, is a friend of Melanie's. In order to depict Melanie as other, and thus less deserving of the law's protection as will be explored in the following chapter, Melanie must be distanced from the Pierce family. In seeking to distance Melanie from the civility of the Pierce family who are "people of the community," the defence takes a particular interest in Mrs. Pierce's involvement, or lack thereof, in what happened on 30<sup>th</sup> of September.

### **Mrs. Pierce as the marker of home and civility**

Mrs. Pierce did not give a statement to police regarding what happened when Melanie was dropped off, and she does not testify in any of the trials. She is not named aside from reference to her 'Mrs. Pierce'. The reasons for her not giving her account to police and not testifying are unknown, but it is something the defence takes a particular interest in. There are insinuations that Gary's wife was personally wary of Melanie, extrapolated from her lack of involvement in caring for Melanie when she arrived. The expectation that the mother of the house would take on a caring role and that her apparent lack of care is suspicious in and of itself is

undoubtedly gendered, but there is something more that the defence are working towards in asking about Mrs. Pierce. In keeping with the image discussed in chapter 3 as to the white woman being held as the symbol of home and civility, the defence goes to extra lengths to ascertain not only that Mr. Pierce was unimpressed and wanted Melanie taken off his hands, but that Mrs. Pierce was made uncomfortable by Melanie's presence and wanted her removed from the civil space of their home. The language used is that of spatial cleansing: Melanie's *removal*, or Melanie being *taken away* as though it was her bodily presence that was the cause of the chaos that visited the Pierce family home on the 30<sup>th</sup> of September. In attempting to draw out this narrative, however, the defence are met with some resistance from Gary and his son Jesse, resistance that has the effect of flustering the defence.

Jesse testifies first and is asked bluntly soon into his cross-examination about his mother's interactions with, and feelings about, Melanie.

Eisner: She - - I understand your mom basically wanted Melanie taken out of your home?

Jesse Pierce: No.

Eisner: She wanted - - well, what did she do? Did your mom come to the room where she was?

Jesse: No.

Eisner: Did your mom come to see Melanie?

Jesse: Yes. She talked a little bit.

(R v Brown and Kindrat, Vol. III: 554)

The neighbour, Mike, who also helped Melanie out of the truck and to the hospital is also asked whether or not Mrs. Pierce was home and if she helped Melanie. Mike responds that she was home, and no she did not help Melanie (Ibid: 561).

The topic of Mrs. Pierce's distance from Melanie during Gary's cross-examination is gently introduced by Kindrat's lawyer, Mr. Eisner, who only goes as far as pointing out that Mrs. Pierce's role was "just observation" and she did not take an active role in caring for Melanie (R v Brown and Kindrat, Vol. III: 583). Brayford continues from the point of establishing that Gary and his wife were "not impressed" to asking Gary to extrapolate on his wife's thoughts about what was going on and her motivation for responding to the situation the way she did. Brayford becomes focussed on leading Gary to say that his wife was upset by Melanie and wanted her taken away.

Brayford: They - - and then it was - - and she [Melanie] said something that upset your wife, is that correct?

Gary Pierce: That upset my wife, as in - -

Brayford: Well, put it this way, the idea that she should be taken to the hospital, that- came from your wife, is that correct?

Gary Pierce: Yes, it did.

Brayford: And she didn't want her at the house anymore?

Gary Pierce: She wanted her to be helped.

Brayford: Well, did Melanie say something that caused your wife not to want to have her at the house?

Gary Pierce: No.

Brayford: There wasn't some comment that she made about your son that your wife was displeased about?

Gary Pierce: That my wife would have been displeased about? No.

Brayford: Think back carefully.

(Ibid: 585-586)

The Crown rises to say “I’m not sure that this witness can speak for his wife,” to which Justice Kovach counters that Gary Pierce would “be in a position to, if he heard something Melanie said in his wife’s presence” (Ibid: 586). Justice Kovach tells Brayford to continue. Gary pushed back at Brayford’s attempt to establish that Melanie made his wife uncomfortable, which throws Brayford slightly off track. Brayford steadies himself and reorients his argument by going back to where he started; Gary phoned the police when he found out Melanie was on the way and wanted someone to take her off his hands.

Brayford: From the time that she got there, did she [Melanie] say something that you would describe as that it bugged your wife?

Gary Pierce: Probably the - - I don’t know if it bugged her, but that wasn’t why she wanted her out of the house. It was, “Jesse, can I sleep with you.” Is that what you’re looking for?

Brayford: Did that appear to upset your wife?

Gary Pierce: No.

Brayford: But it’s - - the words - - when you were making phone calls to try and get the police to come, it wasn’t my words, it was your words about wanting someone to take her off your hands?

Gary Pierce: Yes.

Brayford: Those were your words?

Gary Pierce: Yes.

(Ibid: 586-587)

Brayford abruptly finishes his cross-examination here and the Crown gives Gary the opportunity to explain what he took from Melanie saying she wanted to sleep with Jesse. He says he took it to mean “she was scared and she knew Jesse.” (Ibid: 587).

The Crown asks “did you take it to mean sexually sleep with him?” to which Gary says “no” (Ibid: 587).

The defence was angling to portray Melanie as overtly sexual, to the extent that it upset the mother of the home who wanted Melanie removed. When this narrative did not play out as expected, Brayford returns to the more general idea that Melanie was a nuisance, on account of showing up intoxicated, and that the Pierce family wanted to be rid of her. While Brayford knows the method by which Gary, Jesse and Mike ‘got rid’ of Melanie was that they took her to the hospital for assistance, he still returns to the point of Gary calling the RCMP to take Melanie away. Brayford returning to the image of the RCMP removing Melanie from the Pierce home has symbolic resonance with the RCMP’s formal historic role as the force established to keep law and order in the North West, in part by containing the Indigenous population.

### Taking Melanie away

Aside from the RCMP’s involvement as a paramilitary force involved in organising Indigenous people onto reserve lands in the late 1870s, as explored in chapter 2, the RCMP had an ongoing role in policing the boundaries between settler and Indigenous populations. In the wake of the 1885 Rebellion a pass system was established whereby Indigenous people were not permitted to leave their reserve land unless given a pass to do so from a government Indian agent. Sarah Carter says that a major part of the rationale behind the pass system was to prevent Indigenous women of poor character from making their way into town “for the worst purposes.”<sup>6</sup>

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<sup>6</sup> Carter, *Capturing Women the Manipulation of Cultural Imagery in Canada’s Prairie West*, 187.

These ‘worst purposes’ refer to prostitution.

There is evidence to suggest Indigenous women were working as prostitutes at this time and the reason for this in nineteenth-century Canada is seen to be owing to the inherently licentious nature of Indigenous women. A letter prepared by several Indigenous Plains leaders, quoted in chapter 2, highlights that it was economic hardship that drove many Indigenous women to working as prostitutes on the edges of settler cities and towns: “our young women are reduced by starvation to become prostitutes to the white man for a living, a thing unheard of before amongst ourselves and always punishable by Indian law.”<sup>7</sup> What is known now about Indigenous people being deliberately starved by government agents, as discussed in chapter 3, only adds to the portrait of how Indigenous people fought for survival and where Indigenous women working as prostitutes fits into that story.

Further to this, Constance Backhouse points to there being a conflation between ‘Indigenous woman’ and ‘prostitute’ in nineteenth-century Canada, such that any Indigenous woman in the company of a white man would be assumed to be a prostitute.<sup>8</sup> There were specific laws governing Indigenous women working as prostitutes that Backhouse and Carter argue made it easier to criminalise Indigenous women whether or not they were in fact working as prostitutes.<sup>9</sup> Any Indigenous woman in a white settler space might be believed to be a prostitute and thus subject to questioning, arrest, and/or removal by the RCMP. ‘Indigenous woman’ conflated with ‘prostitute’ is the manifestation of the symbolic squaw, who needs to be cleansed from the white settler space. The squaw poses a threat to the civility of

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<sup>7</sup> qtd. in Devine, 148-152.

<sup>8</sup> Backhouse, “Nineteenth Century Canadian Prostitution Law: Reflection of a Discriminatory Society,” 422.

<sup>9</sup> Ibid.; Carter, *Capturing Women the Manipulation of Cultural Imagery in Canada’s Prairie West*, 187.



white settler space with her debased hyper-sexuality that has the power to entice white settler men.

In attempting to portray Melanie as a hyper-sexualised corrupting affront to Mrs. Pierce, and in trying to show that Melanie allegedly sought physical contact with Mrs. Pierce's son, the defence are tapping into broader constructs that situate Indigenous women's bodies as threats to civility. In not returning to Mrs. Pierce's concern that Melanie be taken to the hospital, but rather to the point at which Mr. Pierce phones the RCMP to take Melanie away, Brayford is appealing to the unconsciously known boundaries of white settler society that position Melanie, and her Indigenous body, as out of place without ever having to say so directly.<sup>10</sup> Another way Melanie is constructed as different and out of place is by comparison to Jesse, who is her peer around the same age as Melanie. He serves as a roughly age appropriate point of reference for normalcy and belonging in white settler communities.

### Comparing Melanie to her peers

Jesse is a couple years older than Melanie. As already stated, at the time of the assault Jesse was dating a close friend of Melanie's, named Kori. He represents a norm and a standard of belonging against which Melanie is contrasted. "I take it, Jesse," says Edmondson's lawyer Hugh Harradence, "that you've never been to Melanie's house" (R v Edmondson, Vol. II, 400). There would be no way for

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<sup>10</sup> A haunting reminder of the continuing difficult and oftentimes abusive relationship between Indigenous women and girls and the RCMP is the recent report by Human Rights Watch. The title of the report is a direct translation for the word "police" in the local Carrier language. See: *Those Who Take Us Away: Abusive Policing and Failures in Protection of Indigenous Women and Girls in Northern British Columbia, Canada*.

Harradence to know whether or not Jesse had ever been to Melanie's house or not, but he has phrased the question in such a way that emphasises that Jesse and Melanie are not from the same kind of place. He is correct; Jesse has never been to Melanie's house. Against a backdrop in which Melanie's has arrived at the Pierce home heavily intoxicated, Harradence says to Jesse, "would it be fair to say, Jesse - and, I don't know, I don't want to embarrass you either, but when you were fourteen back in September 2001, you have very little experience with people drinking alcohol?" (Ibid). Indeed, Harradence is again correct in that Jesse affirms that he had very little experience with people drinking alcohol.

In *R v Brown and Kindrat*, Brayford and Eisner both have very few questions for Jesse, but similar to Harradence, they think it is important to note Jesse's lack of familiarity with people drinking alcohol. Eisner asks Jesse "and had you seen an intoxicated person when you were 14?" Having asked a similar question but using slightly different phrasing, Jesse responds in this instance that yes, he had seen an intoxicated person before.

Eisner: And where had you seen the intoxicated person?

Jesse Pierce: Well, like, different person?

Eisner: Any person that you - -

Jesse Pierce: Well, my dad was drunk a couple of times.

(*R v Brown and Kindrat*, Vol. III: 552-553)

Eisner segues into a brief back and forth in which he asks Jesse to describe how he could tell Melanie had been drinking, then abruptly changes direction to ask about his mother's involvement that evening, as discussed above, before it is Brayford's turn. Brayford's cross-examination of Jesse is less than a page in length. His area of

interest in his succinct cross-examination is to place Melanie in Jesse's circle of peers. The court has already heard that Gary thought Jesse's girlfriend was being dropped off instead of Melanie, but Jesse knew it was not his girlfriend, Kori, because unlike Melanie, Kori does not drink alcohol.

Brayford: Mr. Pierce, the Complainant was the girlfriend-  
- like the best friend of your girlfriend?

Jesse Pierce: Yeah.

Brayford: And was she someone's girlfriend? Did she go  
out with somebody that you also knew?

Jesse Pierce: No.

Brayford: Does she know your cousin?

Jesse Pierce: Travis, yeah.

Brayford: You didn't describe her as Travis' girlfriend?

Jesse Pierce: I wouldn't - - no.

(Ibid: 555).

Melanie does not completely fit in with her 'normal' peers. Jesse, from a respectable family in town, does not go around to her house. Though they are friends, they are obviously from different places. Unlike Melanie, Jesse has little familiarity with alcohol consumption. Melanie is differentiated from her best friend and Jesse's girlfriend Kori as well, because it was implausible that Kori might have been drinking.

### **A victim of her background**

Also unlike Kori, Melanie was nobody's girlfriend. In the preceding chapter, there was testimony from the innkeeper in Mistatim, Darlene Hill, in which she tells the

court the accused “never even looked” at Melanie, and then describes Melanie as smiling at someone in the bar whom Hill presumed Melanie did not know (*R v Brown and Kindrat*, Vol. II, 342-343). In spite of the failed effort to portray Melanie as also having made sexual advances towards Jesse in asking to sleep with him, the defence nonetheless succeeds in arguing that Melanie was the sexual aggressor. The version of Melanie as a sexual aggressor comes from a portrayal of her as desperate.

The relevance of Brayford pressing Jesse as to whether or not Melanie was dating someone was to support a portrayal of Melanie as a troubled young girl vying for the attention of men in the hopes of being rescued from her family. It is a portrayal he returns to in cross-examining Edmondson in *R v Brown and Kindrat*, which will be discussed in the next chapter. This is the same settler colonial fantasy that situates Indigenous men as the ‘true’ perpetrators. Melanie’s supposed sexual aggression is not the result of her biologically determined Indigeneity - as would have been argued at an earlier point in history - it is rather the result of her being the victim of her own Indigenous background. It is the contemporary reproduction of the squaw, who is not biologically inferior, but comes from cultural inferiority.

## Conclusion

This chapter showed how the three accused were community insiders, and how their insider status privileged their account of events. Inconsistencies in the statements and/or testimony of the accused are re-interpreted by Justice Kovach as logical and consistent, owing to norms of reasonable settler blindness. The three accused were portrayed as unequivocally good and decent young men, who were well-known, well-liked and well-respected members of the Tisdale community. As a result of

their unquestionably good standing, their actions on the 30<sup>th</sup> of September were understood to be anomalous and the result of excess alcohol consumption and peer pressure. In a legal system focused on assessing individual responsibility, who among them was asserting peer pressure and who was succumbing to peer pressure is not clear and serves to distract from the violence the three men collectively perpetrated against Melanie.

The last portion of this chapter was dedicated to exploring how Melanie is located as an outsider to dominant white settler society. This was done by examining how she was distanced from the Pierce family who assisted her on the night of the 30<sup>th</sup> of September. Melanie is constructed as the source for the unusual circumstances that came to the Pierce's front door, and constructed as a nuisance from which first the accused and then the Pierce's were trying to rid themselves. Of particular note was the extent to which the defence tried to argue that Mrs. Pierce was especially uncomfortable with Melanie's presence in her home in light of comments Melanie made that were interpreted by the defence to be sexual in nature. The defence located Melanie's physical body as disruptive to the white settler space of the Pierce family home, requiring the intervention of the RCMP to remove Melanie.

The narrative of Melanie's presence as disruptive to white space was linked to broader narratives that encompass imagery of the squaw, those narratives in which Indigenous women's bodies are forcibly cleansed from white spaces by the RCMP. Analogous to the biological inferiority embodied in the historic image of the squaw - who is a victim of her own primitive sexuality - Melanie is constructed as a victim of her own background that is believed to make her seek male attention. As a

contemporary construction of the squaw image, Melanie's supposed sexual aggression is not biological, but rather cultural. The next chapter will go into further detail about Melanie's construction as the sexual aggressor, tied to the dysfunction of her family and her community that re-writes her Indigeneity as the cause of her sexual assault.

## **Chapter 6**

### **Melanie as fantasy other: Narrative and counter-narrative**

Melanie's voice is quiet. She is told repeatedly in both 2003 trials to speak up. Her answers are short, and largely limited to 'yes', 'no' and 'I don't know/remember'. Any longer sentences are frequently peppered with the transcription of the word "(INAUDIBLE)" or involve the Crown, the defence or the judge asking her to repeat herself. She struggles to tell the story of what happened. The Crown prosecutor, Mr. Parker, jumps back and forth chronologically when asking her to re-tell what she experienced, moving from questions about what she remembered the accused doing to her on the 30<sup>th</sup> of September to what her favourite school subject is and what teacher she likes best.

The previous chapter demonstrated how Melanie was located as the source of difference and the cause of the disruption when she arrived at the Pierce family home after being sexually assaulted by Edmondson, Kindrat and Brown. It was demonstrated that she did not belong to the white settler space shared by the accused and the Pierce family. I have thus far dedicated a lot of time drawing attention to what white settler space looks like from the inside and have shown that Melanie is deemed to be outside of it, belonging to a space of Indigeneity. This chapter will speak more specifically about how that outside, Indigenous space is constructed in the trial transcripts.

I begin the chapter by showing how Melanie is constructed as 'loud' and 'obnoxious' and denied her bodily integrity when she is admitted to the hospital

immediately following the multiple perpetrator assault. I then demonstrate how Melanie is constructed as a nuisance to the justice system and how her family and her community are implicated in what is deemed her ‘chronic’ bad behaviour. I argue this has the effect of justifying paternalistic state intervention. I then draw parallels with the broader issue of missing and murdered Indigenous women and girls across Canada to show how Melanie’s ‘chronic’ bad behaviour, owing to the perceived dysfunction of her community, becomes the source of her victimisation. I transition from this point to show how Melanie is constructed as the sexual aggressor. I finish this chapter, and the analysis as a whole, with Melanie’s counter-narrative of events. Melanie’s account provides further insight into the behaviour of the accused and their belief that she was sexually aggressive. Melanie’s account also challenges the testimony of Darlene Hill – the innkeeper in Mistatim who sold the accused beer and snacks with Melanie in tow.

The final section concludes with Melanie’s Victim Impact Statement, in which her recounting of what has happened to her demonstrates a keen awareness of what has been argued about her, and her family, in court. Her Victim Impact Statement echoes the warning provided by Sherene Razack in chapter 3 of what happens when raced, spaced and gendered others bring “sexual violence to the attention of white society.”<sup>1</sup> Melanie believes she is responsible for being sexually assaulted, tells the court she will behave better in the future, and that she feels responsible for the issues that have happened in her family since. She feels responsible for her father being blamed for something he did not do. The outcome of the trial for Melanie is that she has learned a powerful lesson about who she is in

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<sup>1</sup> Razack, *Looking White People in the Eye*, 58.



white settler society. She internalised the blame for what was done to her and her family, and learned she should have no expectations of safety in white settler society.

The first three quarters of the chapter move horizontally across the transcripts, similar to chapter 4. I draw from both trials at the same time in re-constructing a narrative of how Melanie, her family and her community, are constructed. The last part of the analysis that gives portions of Melanie's narrative of events is re-told as a linear story. By way of comparison to the demeanour of the three accused when they first encountered members of the RCMP, I begin here with the description provided by the officer who met Melanie at the hospital on the 30<sup>th</sup> of September.

#### **A. Intoxicated and uncooperative: Denying Melanie's bodily integrity**

In the chronological order of the trials, the description of events from the perspective of the RCMP officers involved comes first. The RCMP officers re-tell a linear, step-by-step story of what they observed, what they asked, and how they made the decisions about what needed to be done. In chapter 5, I showed how the accused were constructed as good and decent young men in part owing to the initial descriptions of their normalcy and good character provided by the RCMP officers who arrested and questioned them. This is in stark contrast to the description of encountering Melanie in hospital on the 30<sup>th</sup> of September provided by Constable Degruchy.

Constable Degruchy was on duty the night of September 30<sup>th</sup>, and he was the first member of the RCMP to come into contact with Melanie. Degruchy is

described as “the head or main investigator on this file” (R v Brown and Kindrat, Vol. I: 210). In addition to being the first to arrive at the hospital on the 30<sup>th</sup> of September, he is also the officer who encouraged Melanie’s father to sign a release for a sexual assault kit to be performed, sent the DNA evidence away for testing, and received the results that the DNA found likely belonged to someone related to Melanie. Constable Degruchy was in the exam room with Dr. Somer at the Tisdale Hospital assisting her in administering the sexual assault kit (a situation described as “unusual” by everyone involved: R v Edmondson, Cross examination of Philip Charles Degruchy: 3, and; R v Edmondson, Evidence of Melanie Campbell and Dr. Linda Somer: 24).

He conducted two follow-up interviews with Melanie about the source of the DNA recovered from the kit, and was also the member of the RCMP who collected her father’s discarded cigarette butt that ultimately linked the DNA collected during the sexual assault kit to her father. As mentioned briefly in chapter 3, Melanie does not like Constable Degruchy. In *R v Edmondson*, Constable Degruchy gives the following account to Crown prosecutor Mr. Scott of how he came to meet Melanie at the hospital on September 30th:

Scott: The matter that brings you to court today, Officer, when did it first come to your attention?

Degruchy: On the 30th of September at approximately 10:20 in the evening, p.m., I received a call from our dispatch that they received some information that a young, young lady by the name of Melanie Campbell had been missing from Porcupine Plain and may be at the Tisdale Hospital.

Scott: As a result of that information, Officer, what did you do?

Degruchy: I went directly to the Tisdale Hospital to, to see if, if that was the case.

Scott: And, were you able to locate someone of that name there?

Degruchy: Yes, I was.

Scott: And, did you have some, some observations of that individual at that time, Officer?

Degruchy: Yes, I did. Upon entering the hospital, I could hear yelling and screaming. I proceeded to the emergency room, what I know it to be, to find a young girl on the- I guess you'd call a gurney, hospital bed, whatever, whatever you want to call it. She was obviously appeared to me that she was intoxicated and was in some pain, by, by what it appeared.

(R v Edmondson, Vol. II: 289)

A point of tension in the trial proceedings is that the RCMP failed to seize the blood sample taken from Melanie during her hospital stay in order determine a blood alcohol level. As such, there is no objective measure of how intoxicated Melanie was the evening of the assault. This is important to the Crown's case, as the Crown will argue in closing that in addition to the issue of Melanie not being capable of giving consent because of her age, she was also incapable of giving consent based on being heavily intoxicated. In order to confirm that Melanie was indeed heavily intoxicated on September 30th, the Crown seeks to establish Constable Degruchy's experience and competency in being able to identify when someone is extremely intoxicated without an objective measure such as a blood test or breathalyser. Degruchy is asked to give evidence as to why he believed Melanie was intoxicated.

Scott: I see. What- Officer, your job brings you in contact with intoxicated individuals?

Degruchy: That's correct.

Scott: And, you've had some experience with those individuals?

Degruchy: Yes, I do.

Scott: What, on this occasion, led you to believe that this individual was intoxicated?

Degruchy: Basically, the yelling and screaming and swearing that was going on while, while laying on the gurney.

(R v Edmondson, Vol. II: 290)

Given the association between issues of alcoholism and Indigenous communities as described in chapter 3, reinforcing that Melanie was intoxicated does not have the effect of challenging her capacity to consent. It has already been established by comparison to Melanie's peers in chapter 5 that it is 'abnormal' for young people of Melanie's age to be drinking alcohol. Thus her consumption of alcohol on the 30<sup>th</sup> of September marks her as an outsider and only serves to reinforce that her behaviour that night was the result of a pre-existing cultural problem emanating from her Indigenous upbringing. As opposed to the accused, whose alcohol consumption is normalised and serves to legitimise their blindness and diminish their personal responsibility for what happened (as explored in chapter 4), Melanie's alcohol consumption is part of a broader association with damaging tropes of Indigenous degeneracy. To this end, her intoxication on the 30<sup>th</sup> of September is discussed as a pattern of her own bad behaviour.

In *R v Brown and Kindrat*, Brayford asks Constable Degruchy about the interviews he conducted with Melanie regarding her alleged abuse by her father. Unlike the statement Melanie gave after being sexually assaulted by Edmondson, Kindrat and Brown, the interview with respect to her father's alleged abuse was

videotaped.<sup>2</sup> The videotape is not played for the court, but Brayford has evidently seen it. Brayford describes Melanie as having an uncharacteristic lack of intimidation when being questioned by Degruchy, as statement with which Degruchy agrees. Brayford follows by asking about something that happens at the very end of the tape that has nothing to do with the trial happening right then, or the case Degruchy is building against Melanie's father.

Brayford: Now, the - - a the one point when you were interviewing her, and this would be a considerable time, just to that the date isn't significant, but it was a considerable time after the evening in question, on one occasion the - - as you were interviewing her, she was fiddling with things in her pockets?

Degruchy: Yes, sir.

Brayford: And what did that turn out to be? What was she rattling in her pocket?

Degruchy: That was beer bottle caps.

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<sup>2</sup> It is noted in *R v Edmondson* that it is standard practice for interviews with children who are victims of assault to be videotaped when being interviewed because of the concern that "it is so easy to lead a child, if you are asking leading questions, and children want to please the interviewer" (*R v Edmondson*, Cross-examination of Eleanor Anne McKenna, 11). Harradence puts that question to Dr. McKenna during his cross examination in *R v Edmondson* as a way of discrediting the statement Melanie gave to police the morning after the assault which was only recorded on paper, as well to later suggest while cross-examining Melanie that her rendition of what happened had been coached in one way or another by members of her Indigenous community, national media, and members of Social Services she was in contact with (*R v Edmondson*, Cross-examination of Melanie Campbell, 9-26. Pages 9 through 26 of Melanie's testimony deals with this general topic of setting up and suggesting that her version of what happened on September 30<sup>th</sup> was not her own, with more pointed and specific mention of this on pages 14, 16 and 24). In spite of Harradence's intention in highlighting that children's statements are easily coached and it is thus "borderline incompetent not to electronically record an interview with a child if the facilities are available" while cross-examining Dr. McKenna, what it points to is the different processes the same RCMP officers used to investigate the assault of a twelve-year-old Indigenous girl by three young white men known to them, and the process employed when there is possible evidence a twelve-year-old Indigenous girl is being abused by an Indigenous man.

Brayford: And as that certainly wasn't the reason you were trying to talk to her, I take it you chose just to not follow up?

Degruchy: That was after - - after my videotaped interview. It was basically, we were - - we were done, and I could hear this rattling. I asked her what that was, and she produced the beer bottle caps.

(R v Brown and Kindrat, Vol. I: 203-205)

Harradence poses a very similar line questioning in *R v Edmondson* regarding the beer bottle caps in her pocket the videotaped interview which he has also, evidently, seen (R v Edmondson, Cross-examination of Philip Charles Degruchy: 30-31). The defence is willing to accept the Crown's argument that Melanie was intoxicated without the blood sample to prove it. However, they accept Melanie's intoxication on the 30<sup>th</sup> of September on the basis that it is something she has done on other occasions, unlike most other twelve-year-olds.

Further to Melanie's intoxication pointing to a pattern of bad behaviour, Degruchy associates Melanie's demeanour in the emergency room with her level of intoxication, as opposed to the fear and trauma that might be associated with the events that have just taken place outside Dean Edmondson's truck. Mr. Scott asks Degruchy closer to the end of his testimony to again "relay to the jury the demeanour of Miss Campbell throughout this process." He responds, "as - like I said, in - just prior - she appeared to me to be intoxicated. She was swearing a lot, screaming, yelling" (R v Edmondson, Vol. II: 292-293). In the second trial, *R v Brown and Kindrat*, Constable Degruchy is now practiced at relaying the salient points of his interaction with Melanie. He makes repetitive mention of deducing Melanie was intoxicated from the degree to which she was foul mouthed.

Scott: Upon arriving at the Tisdale Hospital, Officer, what did you find?

Degruchy: Upon my entry to the hospital I could hear foul language, swearing, yelling. I proceeded to go to the emergency room to see what the gist of all this noise was. I noticed a young girl laying on the - - I guess you'd call it the gurney or the stretcher or whatever it is in there.

Scott: Okay. And you noted earlier about some swearing and some foul language. Did you determine where that was coming from?

Degruchy: It's - - it appeared to me that it was coming from the emergency room. That's why I proceeded down the hall to the emergency room to see if - - if that's where I needed to be.

Scott: Okay. Give us your observations then, about what was going on in the emergency room when you showed up?

Degruchy: When I went into the emergency room there was some - - there was swearing. There was a young Aboriginal girl laying on the gurney. She was swearing, mentioning that she was in pain. She was holding her vaginal area and saying that it hurt. At that time she appeared to me to be intoxicated.

Scott: Okay. You say she "appeared to be intoxicated" what led you to believe that?

Degruchy: Just her actions, her demeanour, her verbal - - you know, yelling and screaming and swearing, and I made no observations other than her actions as to - - like, as to why she was acting this way.

(R v Brown and Kindrat, Vol. I: 164-165)

Degruchy's phrasing is slightly awkward and disjointed at the end of this excerpt but it is nonetheless clear that he is chalking up Melanie's difficult behaviour to what he perceives as her level of intoxication as opposed to considering the source of her pain - a multiple perpetrator sexual assault - as the cause. The doctor on duty at the Tisdale Hospital, Dr. Somer, provides a different angle on Melanie's demeanour and

tells the court Melanie was:

...lying peacefully on the stretcher, appeared to be sleeping, looked very sedated, but when you tried to talk to her or approach her, really, with anything she would become - - she didn't want anybody having anything to do with her. She'd thrash around and prevent you from, you know, having anything to do with her.

(R v Brown and Kindrat, Evidence of Melanie Campbell and Linda Somer: 5)

Dr. Somer is asked if Melanie's conduct gave her any concern at that point in time, and she responds "of course, she seemed to be very upset. I was afraid, you know, she must have had something awful happen to her" (R v Brown and Kindrat, Evidence of Melanie Campbell and Linda Somer: 6). Degruichy registers Dr. Somer's concern in his testimony, but positions Melanie as the source of nuisance as opposed to understanding her behaviour as a symptom that, as Dr. Somer put it, Melanie "must have had something awful happen to her" (R v Brown and Kindrat, Evidence of Melanie Campbell and Linda Somer: 6). With regards to Dr. Somer's concern, Degruichy says "Dr. Somer was also concerned that she's not going to be able to do anything for this child the way she's acting. I made mention to - - to the young girl on the - - on the bed there that she might want to settle down or we won't be able to help her" (R v Brown and Kindrat, Vol. I: 166).

Degruichy is questioned by the defence about the evidence he has provided with regards to Melanie's apparent intoxication. The point is made that, absent any other symptom or sign, yelling and cursing is not a clear indication that someone is intoxicated. Brayford, Brown's counsel, asks Degruichy to clarify what "actual symptoms of alcohol impairment" Degruichy noticed (R v Brown and Kindrat, Vol. I: 200). Degruichy summarises what he observed in Melanie's behaviour and revisits



the issue of Dr. Somer's concern with a considerably more authoritative rendition of what he said to Melanie in an effort to get the situation under control.

I didn't make any notice of any odour or - - the usual signs that we would look for would be odour, staggered gait, bloodshot eyes, slurred speech. None of that was observed by myself. My - - her actions on the gurney tended to tell me, like, this isn't - - you know, this isn't a normal course of action, and I believe, if I - - if I remember correctly, with reviewing my notes, Dr. Somer's concern was that she - she's out of control. I believe she might have mentioned she was intoxicated. "I can't do nothing for her unless she settles down." At that point, I went to - - to Melanie Campbell, and I said, "Listen, you've got to settle down or nothing can be done for you." Like, the doctor was concerned and nothing was going to be done until parental consent was gained, regardless.

(R v Brown and Kindrat, Vol. I: 200-201)

What could have equally been a description by Degruchy as the main investigating officer of Melanie's fearfulness, the trauma, or her need for assistance is instead a description of Melanie's bad behaviour due to her level of intoxication. Degruchy's response is to discipline Melanie so that he and Dr. Somer could 'help' her. Whether or not what happens next is actually 'helping' Melanie is questionable. Melanie is forcibly settled down with a sedative so that an intrusive sexual assault kit can be performed over the next several hours. The value and necessity of performing a sexual assault kit has been called into question by researchers who have found that the results of the kit more often serve to discredit the survivor than they do assist in conviction.<sup>3</sup> Many survivors who undergo a sexual assault kit liken it to another sexual assault, describing the process as "invasive" and "terrorizing."<sup>4</sup> In giving consent for the kit to be performed, says Jane Doe, survivors are:

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<sup>3</sup> Doe, "Who Benefits from the Sexual Assault Evidence Kit?," 383; See also: Feldberg, "Defining the Facts of Rape"; McGregor et al., "Examination for Sexual Assault"; Parnis and Du Mont, "Symbolic Power and the Institutional Response to Rape."

<sup>4</sup> Doe, "Who Benefits from the Sexual Assault Evidence Kit?," 368 and 396.

...treated as if the body fluids and samples it contains do not belong to them, as if the crime that has been committed against them is separate from them. And when raped women sign the required consent forms that give authority of the kit over to police investigators, that separation becomes official.<sup>5</sup>

Jane Doe likens the body undergoing a sexual assault kit to the body of a homicide victim undergoing autopsy where the physical body is the scene of the crime.<sup>6</sup> Both bodies are mined for evidence, and in the case of sexual assault, this is done with little consideration for the agency of the body from which evidence is being extracted. Melanie was even one step further removed from being able to assert any agency in the decisions made about her undergoing a sexual assault kit on account of her age.

Dr. Somer told Constable Degruchy that she was uncomfortable performing a sexual assault kit given Melanie's state, but tells the court "it was the thinking of everyone that we should do it then, at the time" for sake of evidence gathering (R v Edmondson, Evidence of Melanie Campbell and Linda Somer: 7). Assisting Dr. Somer with the decision-making was a nurse and Constable Degruchy. Dr. Somer says Melanie "appeared to be quite young" and was "not in the mood" to be consenting to a sexual assault kit regardless, and so Dr. Somer sought the consent of a parent or guardian (Ibid: 5). Melanie's father was alerted by the RCMP that Melanie had been found and was already en route to Tisdale. When he arrived at the hospital, Degruchy told him he believed Melanie had been sexually assaulted and they needed parental consent to perform a sexual assault kit (R v Edmondson, Vol. II: 302). Melanie's father signed the consent form on Melanie's behalf. As has already

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<sup>5</sup> Ibid., 383.

<sup>6</sup> Ibid., 379.

been mentioned, the DNA evidence collected from the sexual assault kit results in Melanie's father being investigated and subsequently imprisoned for sexual assault in cases unrelated to Melanie.<sup>7</sup>

With the consent forms signed, Melanie was sedated and Dr. Somer and the nurse began working through the requirements of the sexual assault kit. In addition to Melanie having no say in whether or not a sexual assault kit would be performed on her, and in addition to being sedated because, by Dr. Somer's description, Melanie was putting up a fight and did not want anyone having "anything to do with her," Melanie also underwent the entire sexual assault kit with the participation of a male RCMP officer (R v Brown and Kindrat, Evidence of Melanie Campbell and Linda Somer, 5). Because Dr. Somer was unfamiliar with the particulars of the sexual assault kit, Degruichy stayed in the room during the examination and assisted Dr. Somer in collecting and labelling evidence to ensure it was all done to code. The 'help' Melanie was given assisted her in no way. Melanie was denied her bodily integrity by Edmondson, Kindrat and Brown, and then again by the legal and medical professionals who reinforced that her body was not her own. She was not listened to and not taken seriously. Her resistance to being touched was a nuisance, and her terror was heard as the foul-mouthed screams of a drunk Indigenous girl in need of discipline.

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<sup>7</sup> Melanie's father would have been dependent on Constable Degruichy explaining what it was he was signing. When Brayford is cross-examining Melanie's mother, Carol, he asks her about papers filed in a civil lawsuit against the three accused. Carol explains that a lawyer came to see her and her husband after Melanie and their other daughter were put into foster care. They signed papers believing that the lawyer was going to help them get their daughters back. She said she felt she had been tricked. Brayford interrupts her to say "But the actual lawsuit that was instigated by your husband was to sue-" when he is also interrupted by a man's voice in the background saying "I can't read. I didn't know what I was signing" (R v Brown and Kindrat, Vol. II: 325).

Over the course of the trials, how Degruchy talks about Melanie's level of intoxication, and what he believes was her resulting bad behaviour, becomes increasingly removed from an acknowledgment that Melanie had just been sexually assaulted by three men when he encountered her. I explained above that the Crown sought to prove Melanie was heavily intoxicated as a means of arguing she was unable to consent. Brown lawyer, Brayford, is willing to go along with the idea that Melanie was intoxicated but would like Constable Degruchy to more strictly categorise the stage of intoxication at which he would place Melanie when he encountered her in the hospital based on his formal training in the RCMP.

Brayford: And in your breathalyzer training, they - - they go through, sort of a - - a - - a little schematic diagram, I remember, where they start out with someone who is sober and then sort of go through the personality changes?

Degruchy: Yes, sir.

Brayford: And there is sort of a level where the person is loud and obnoxious?

Degruchy: Yes, sir.

Brayford: And I take it, that's sort of about where you'd slot this person in, the Complainant, in that evening?

Degruchy: Yes, sir.

Brayford: And if you go on, on that little diagram that they have, they eventually get to the part of "falling down drunk"?

Degruchy: Yes, sir.

Brayford: So she wasn't at that stage. She was at the loud and obnoxious stage?

Degruchy: I'd say yes. I couldn't make mention of her falling down drunk or staggered gait. She was on her back on the gurney. Yeah, I'd say at the loud and obnoxious

stage, yes.

(R v Brown and Kindrat, Vol. I: 202)

From his initial testimony in *R v Edmondson* in which he plainly says he deduced Melanie was intoxicated because she was yelling, screaming and using foul language, Degruchy's testimony develops to belie an explicitly negative interpretation of Melanie's behaviour as 'loud and obnoxious'. When he is next cross-examined by Kindrat's lawyer, Eisner, Degruchy flippantly makes reference to Melanie's 'loud and obnoxious' behaviour. He re-asserts, without provocation from the defence that Melanie was difficult to manage at the hospital. He also confirms again that he believes her out of control behaviour was caused by her level of intoxication.

Eisner: And it's my further understanding that you heard her speak on a number of occasions?

Degruchy: Well, scream.

Eisner: And then you also heard her speak, did you not?

Degruchy: Yes.

Eisner: Okay, in fact, I mean, you've given - - you've described to my friends, her level of intoxication, but it's fair to say, sir, that based on all the training and experience that you've had, that the reason you gave that level, which was not extremely drunk, not feeling good, somewhere in the middle, was because of her behaviour, the yelling, the screaming and the foul language?

Degruchy: Yes.

(R v Brown and Kindrat, Vol. I: 213)

It is the version of Melanie as "loud and obnoxious" and "out of control" that Degruchy introduces and repeats through invitations to describe Melanie's demeanour and behaviour, which becomes 'the truth' of what poor behaviour

Melanie is capable of. Melanie as loud, obnoxious and out of control on the night she was assaulted is the oppositional mirror image of the accused's 'truth' as average young men of good character who were getting up to some normal fun that maybe went a bit too far. That Melanie was sexually assaulted is obscured in this 'truth'. Though her voice is quiet in the courtroom, and she struggles to answer questions, taking several long pauses, 'the truth' of her as more forceful than she appears on the stand remains. Before Degruchy arrived at the hospital, he had a context for Melanie as *missing* and having *run away*. The next section will explore how this context of Melanie as a missing run-away may have prejudiced his initial response to encountering Melanie in the Tisdale Hospital.

## **B. Melanie as a run-away: Connecting to the stories of missing and murdered Indigenous women and girls**

Once it is firmly established in both trials that Melanie's out of control behaviour is in large part caused by her level of intoxication, the next question posed to Constable Degruchy is a justification of why he thought a sexual assault kit needed to be performed. Degruchy describes the logic behind going forward with the preparation of a sexual assault kit beginning with the phone call he received from the RCMP detachment from Melanie's hometown of Porcupine Plain:

I spoke to Dr. Somer at that time with regards to the completion of a sexual assault kit. There was - Constable Woloshyn of Porcupine, when he advised me that she may have been run away, did mention a possibility of a sexual assault may have occurred. Upon talking with Dr. Somer, she wished parental consent prior to the start of the kit, and at that time, I called Constable Woloshyn in Porcupine to, to learn that the father of this girl was on the way to Tisdale to offer such consent.

(R v Edmondson, Vol. II: 289-290)

Degruchy links the suspicion of sexual assault to the RCMP officer in Melanie's hometown, Constable Woloshyn, describing her as having "been run away." The phrasing is awkward, and it is not clear from the transcript if it is meant to read "she may have been *a* run-away" or if Degruchy fumbled over his words and did not intend to include the word 'been' so that it might simply read that "she may have run away". Regardless, the stream of logic as explained by Degruchy, leading him from one step in the process to another, is one in which Melanie's characterisation as being a, or having, run away is linked to the possibility or suspicion that she has been sexually assaulted. The behaviour described as screaming and not letting anyone near her has already been understood as resultant from Melanie's intoxication, so Degruchy provides another route for explaining to the court why it was evident to him a sexual assault kit was the next reasonable step. It was a possibility that she had been sexually assaulted, he posits, because Melanie had engaged in the risky behaviour of running away.

Characterising Melanie as having run away is significant in the broader context of the number of missing and murdered Indigenous women in Canada. When exploring the pattern of behaviour of young white men roaming the land while intoxicated and picking up Indigenous women in chapter 4, I referred to NWAC's database of missing and murdered Indigenous women and the Amnesty International *Stolen Sisters* and *No More Stolen Sisters* reports.<sup>8</sup> Highlighted in those reports is the idea that violence perpetrated against Indigenous women in

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<sup>8</sup> *Stolen Sisters: A Human Rights Response to Discrimination and Violence against Indigenous Women in Canada*; *No More Stolen Sisters: The Need for a Comprehensive Response to Discrimination and Violence against Indigenous Women in Canada*.

Canada is frequently naturalised as the effect of transient, or high-risk activities such as hitchhiking, or high-risk lifestyles in sex work or gang affiliation. The reports say that the police response to Indigenous families reporting their loved ones missing is oftentimes lacklustre, owing to the perception of Indigenous people as transient, troubled, and more likely to be involved in high-risk activities or lifestyles.

The more recent report referred to in chapter 5, *Those Who Take Us Away*, points as well to the frequency with which RCMP members routinely disregard complaints of violence, and calls for assistance in several small northern British Columbia communities.<sup>9</sup> Where Indigenous women and girls are portrayed as transient, troubled, or engaged in a high-risk lifestyle or high-risk activities, the reports show that the police believe them to be complicit in their own victimisation and less deserving of assistance.<sup>10</sup> As a run-away, Melanie is engaging in a high-risk activity. Indeed, accepting a ride from the accused is also high-risk activity that Justice Kovach mentions explicitly in his sentence, saying the three accused “returning to their truck, saw Miss Campbell, invited her to get into the truck, offering her a ride, and for whatever reason, she agreed” (R v Edmondson, Judge’s Sentence: 8).

In Degruy’s quote above, he identifies Melanie as a/having run away and then posits that “a sexual assault may have occurred” (R v Edmondson, Vol. II: 289-

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<sup>9</sup> *Those Who Take Us Away: Abusive Policing and Failures in Protection of Indigenous Women and Girls in Northern British Columbia, Canada.*

<sup>10</sup> A general malaise to the number of missing and murdered Indigenous women in Canada has reached the international stage. Most recently in September 2013, the United Nations Human Rights Council called on Canada to undertake a national review regarding violence perpetrated against Indigenous women. The call was made during the UN’s Universal Periodic Review of Canada’s human rights records, which occurs every four years. The UN Human Rights Council had made the same recommendation four years previous in 2009. The Government of Canada made no commitment to tackle the issues brought forward by the Council. In 2013, Canada’s ambassador to the United Nations responded that “Canada is proud of its human rights record and our peaceful and diverse society.” See: “Canada Nixes UN Review of Violence on Aboriginal Women,” accessed January 2, 2014, <http://www.cbc.ca/1.1860828>.



290). There is no agent of action in Degruchy's phrase, and so it reads as though "a sexual assault" is a potential by-product of running away. The extent to which Degruchy perceived Melanie from the outset as engaging in risky activity can be gleaned from the statement he took from Brown the day after he met Melanie in the hospital. Brown first describes Melanie as a "short native girl" hanging around outside a bar already drunk (*R v Brown and Kindrat*, Vol. I: 193). He says she asked them for a ride. The question Degruchy thinks to ask Brown is "did she offer you sexual favours for a free ride?" (*Ibid*: 194). Brown says no. He also says nothing of a sexual nature occurred. Degruchy asks, "why do you think she would say you and your buddies sexually assaulted her?" Brown responds, "honest to God, I have no clue. We thought we were doing her a favour by giving her a ride" (*Ibid*: 195).

Similar to how Melanie's alcohol consumption on the 30<sup>th</sup> of September is connected to a pattern in her behaviour outside the events of the 30<sup>th</sup>, so too is her identification as having run away that night connected to a pattern of transience, and general bad behaviour outside the 30<sup>th</sup> of September. The 'truth' established through Degruchy's initial description of Melanie as foul-mouthed, out of control, in need of discipline, and also 'loud and obnoxious' is supported by what is seen as Melanie's proclivity for running way, getting into trouble and fighting with her parents. When Melanie's mother Carol takes the stand, Melanie's "chronic" bad behaviour outside the 30<sup>th</sup> of September is a focus for the defence (*R v Edmondson*, Vol. II: 312). In *R v Edmondson*, Carol subtly changes the focus of the conversation away from just being about Melanie:

Harradence: And, I take it, ma'am, that prior to September 30th when Melanie was living at home - let me just get the wording correct - she was, she was kind of stubborn. Do you agree with that?

Carol: How do you mean, stubborn? Like, kind of headstrong or-

Harradence: Headstrong.

Carol: - like kind of argumental or -

Harradence: Yeah.

Carol: Yeah, we argued.

Harradence: Is that correct?

Carol: Yeah.

Harradence: Thank you. She was able to speak her mind.

Carol: Yeah.

(R v Edmondson, Vol. II: 315-316)

Carol responds to Harradence's personification of Melanie as 'stubborn' by saying "yeah, we argued," subtly modifying the focus from Melanie as the one who was stubborn, or argumentative, to Carol and Melanie sometimes arguing. Kindrat's lawyer Eisner puts to Carol, "it's fair to say that in 2001, she was a determined child who could be stubborn. . .and she would not back away from arguments, with yourself at least, and perhaps others?" (R v Brown and Kindrat, Vol. II: 317). Carol says 'yeah'. What might just as easily be constructed as a pre-teen being argumentative with her parents – her home being a scenario in which Melanie felt able to speak her mind - is extrapolated to an identification of Melanie as generally argumentative. In the next step of this logic, Melanie's general stubbornness and argumentative nature then lead her to engage in other risky behaviour such as running away:

Harradence: It's fair to say, ma'am, that you'd had some difficulty with Melanie prior to September 30th?

Carol: Yes.

Harradence: And, she was chronic, always running away.

Carol: Not always.

Harradence: She'd run away several times though. Is that right.

Carol: Not that many times. Like, it - it's not like -

Harradence: Okay. Well, let's back up a bit then. She had run away from home.

Carol: About three times maybe.

Harradence: About three times

Carol: Yeah.

Harradence: Okay. And, one time she ran away and stayed away overnight.

Carol: Yeah.

Harradence: Is that right?

Carol: yes.

(R v Edmondson, Vol. II: 312-313)

Melanie's chronic pattern of running away is then constructed as not only worrying to her parents, but also a nuisance to the criminal justice system:

Harradence: I take, ma'am, on other occasions prior to September 30, 2001 when Melanie had ran away, you had phoned the police for assistance in locating her.

Carol: What does that mean?

Harradence: You had phoned the police to help you try and find her.

Carol: Before?

Harradence: Yeah.

Carol: Yeah.

Harradence: Before September 30th. Is that right?

Carol: Yeah.

(R v Edmondson, Vol. II: 315)

Melanie's running away is purposefully criminalised with reference to her having stolen her parents' car on two occasions.

Harradence: And, then on, on a couple of occasions, she'd actually stolen the family car. Is that right?

Carol: That was after the assault.

Harradence: Well, there was a time before the assault.

Carol: No, it was right after. It was twice after she was being assault.

Harradence: Well, did you and your husband charge Melanie with-

Carol: No.

Harradence: -taking the family car?

Carol: No.

(R v Edmondson, Vol. II: 313)

It is not entirely clear if Harradence is suggesting that the responsible thing for Melanie's parents to have done would be to criminally charge Melanie for stealing the car, but Carol's response to Harradence pushing her on the topic suggests that is what she understands him to be saying. She explains she felt Melanie had "been through too much already" (R v Edmondson, Vol. II: 314). Pushed further by Kindrat's lawyer Eisner in *R v Brown and Kindrat*, Carol says "we were going to charge her, but we dropped it" (R v Brown and Kindrat, Vol. II: 323).

The effect of questioning Melanie's mother so vigorously as to Melanie's chronic, out of control and criminalised behaviour, is that the source of Melanie's risky behaviour boils down to her parents' inability to parent properly, requiring state intervention. Brayford attempts to demonstrate that state intervention was on the table for Melanie and her family before the justice system intervened on the 30<sup>th</sup> of September:

Brayford: It would be fair to say that it had got to the point where you people couldn't handle Melanie on your own and you'd got Social Services involved, and they got a counsellor for her prior to September 30, 2001; is that right?

Carol: Yeah, they were supposed to help us with Melanie, dealing with Melanie.

(R v Brown and Kindrat, Vol. II: 322)

Carol continues that not much happened by way of getting Melanie a counsellor. The 'help' provided by Social Services really only came after the intervention of the justice system in subsequently ordering that Melanie and her siblings be removed from their family home. Melanie and her sibling's removal, as explored earlier, was in light of the DNA evidence collected from the 'help' Melanie was given at the hospital the night she was assaulted. Brayford's tone above is combative, and suggests he is talking about a larger group when he says "*you people* couldn't handle Melanie on your own." This follows from his characterisation of Carol in relation to Melanie a page earlier, which is not as Melanie's mother but as someone who happened to be supervising Melanie and was struggling to do so.

Brayford: Just dealing with the difficulties that you had, sort of, if I can call it, supervising Melanie, she had run away from home on a number of occasions before this occasion; is that right?

Carol: Yes.

Brayford: And it had gotten, or at least it was serious enough you'd had to get the police to bring her home; is that correct?

Carol: Yes, because we were scared for her.

(R v Brown and Kindrat, Vol. II: 321)

It is an odd turn of phrase to say a child's parent is "supervising" her, and it disassociates the familial connection between Melanie and Carol. In addition to the personal slight of describing Carol as someone merely supervising Melanie, and struggling to do so, it portrays a scenario in which no one is engaged in truly raising Melanie save for the intervention of the state.

Eisner, who cross-examines Carol immediately following Brayford, works to reinforce this image. Carol's exasperation with this line of questioning shows towards the end of her time testifying. She pushes back at Eisner's attempt to reassert what Harradence already did a month previous, and what Brayford did just moments ago: that she could not properly 'supervise' Melanie without state intervention. Eisner is asking Carol about the time she phoned the police because Melanie had left the house in her parent's vehicle.

Eisner: And are the - - I take it the reason that you reported it to the police as a theft was - - is just an indication of your inability to deal with her without the police's help?

Carol: What's that supposed to mean?

Eisner: Well, that sometimes when parents are able to discipline their children, they ground them, they make them go to their room, maybe spank them. That wasn't working with Melanie, so that's why you wanted the criminal justice to help to try and provide appropriate discipline, not because you wanted her punished?

Carol: I don't know.

(R v Brown and Kindrat, Vol. II, 323)

In stark contrast to the rosy picture of Edmondson, Kindrat and Brown belonging to a community that “cares about their young people,” Melanie is from a dysfunctional upbringing that necessitates state intervention in disciplining her (R v Brown and Kindrat, Vol. III: 643). This paternalism is indicative of how the historic position of the Canadian state as the legal guardian of Indigenous peoples, as explored in chapter 2, persists through a construction of Indigenous people as incapable of taking care of their own. In chapter 3, I discussed the Indian residential school system (another form of ‘help’ offered to Indigenous people) and its impact on intergenerational relationships. I quoted the *Royal Commission on Aboriginal Peoples* as saying “the residential school led to the disruption in the transference of parenting skills from one generation to the next. Without these skills, many survivors had had difficulties in raising their own children.”<sup>11</sup> In the ahistoricised account of the trial, the difficulties in Melanie’s home-life, which are linked to the impact of an earlier form of paternalistic state intervention, serve to justify continued paternalistic state intervention. Whereas the relationship of the accused to members of the RCMP is indicative of their belonging, Melanie’s relationship with the RCMP is one in which she is a nuisance requiring discipline because of a failure of her ‘people’ to properly ‘supervise’ her.

Unlike Melanie’s community, the community to which Edmondson, Kindrat and Brown belong is trusted so much that even when Edmondson is convicted of sexual assault Justice Kovach sees fit to let his community keep an eye on him rather

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<sup>11</sup> “Report - Royal Commission on Aboriginal Peoples - Indian and Northern Affairs Canada,” 379, accessed December 20, 2013, [http://www.collectionscanada.gc.ca/webarchives/20051228190610/http://www.ainc-inac.gc.ca/ch/rcap/sg/sgmm\\_e.html](http://www.collectionscanada.gc.ca/webarchives/20051228190610/http://www.ainc-inac.gc.ca/ch/rcap/sg/sgmm_e.html).

than send him to prison:

It appears from the volume of letters of support that the Edmondson family is reasonably well-known in the community. If Mr. Edmondson is confined to his residence, except for purposes of employment or emergent circumstances for a lengthy period of time, the community will know about it.

(R v Edmondson, Judge's Sentence: 18-19)

The letters filed on Edmondson's behalf, Justice Kovach tells the court, in no way shift blame onto Melanie for what happened, nor do they suggest Edmondson has been unfairly treated by the justice system. "Rather," says Kovach, "they are expressions of support and confirmation of their opinion that he is not a risk in the community" (Ibid: 17). Indeed, by sexually assaulting a child who is an outsider to white settler society, none of the accused present a risk to "the community" of which they are a part. As was demonstrated in the latter part of chapter 5, Melanie's disruption of white settler space is seen to pose a risk to white settler society.

The supposed chronic bad behaviour that brought Melanie into white settler space – running away – is believed to make her complicit in her own victimisation. Her chronic bad behaviour, explored above, emanates from what is constructed as an ahistoricised account of her upbringing that necessitates state intervention. The extent to which she is portrayed as a victim of her own poor upbringing is the subject of the next section. Focussing on her upbringing supports the construction of Melanie as the sexual aggressor who poses a risk to the civility of white settler space.



### **C. Constructing Melanie as the sexual aggressor**

In both trials, Brown and Edmondson testify that Melanie was the one who initiated sexual activity. They both say she climbed onto Edmondson's lap in the front seat while he was driving. Like Kindrat in his statement to police when he said he tried to have intercourse with Melanie because she kept saying "more, more," Edmondson and Brown both claim in court that they too failed to perform under the pressure of Melanie's demand. Brown tells the court that Melanie said "I love you guys. I want to make love to you guys. I want to live with you guys. I want to move in with you guys" (R v. Edmondson, Vol. III: 423). Crown counsel asks what he did once Melanie told them all that. He went to "go behind her" and began rubbing her "on her rear end" with his "midsection" (R v. Edmondson, Vol. III: 424). Crown counsel, Parker, asks "for what purpose" did he do this and Brown offers a variety of reasons as to how he came to find himself behind Melanie, who was at that time sitting on Edmondson's lap: "I'd been drinking. I was – she was saying to me and to everybody that she wanted to make love to us all, and all this, went on and on" (R v. Edmondson, Vol. III: 424).

Brown's statement to the RCMP, as explored in chapter 5, did not mention even an attempt at sexual activity between Melanie and the three accused. Brown's testimony sounds much like the portions of Kindrat's statement to police, also discussed in chapter 5, that were read into the transcript at points throughout the trial. Parker asks Brown to be more specific about what it was he was doing behind Melanie.

Brown: I had my pants on and I was rubbing her.

Parker: Rubbing her with what?

Brown: Well, just my front area, my pelvic area.

Parker: For what purpose?

Brown: Arousal. I was aroused. She was telling everybody she wanted to make love to us.

Parker: Okay. So, you were trying to get erect.

Brown: Trying to.

Parker: What were you try – what were you trying to do? Just tell us.

Brown: Trying to have – make love to her.

(R v. Edmondson, Vol. III: 427-428)

The terminology “make love” sounds wildly out of place in the context of a sexual assault trial. From Brown’s mid-sentence stall it sounds as though he was going to say “trying to have sex,” or similar, but his last moment switch to “make love” matches the language he used when telling the court about Melanie’s supposed request that they all “make love” to her. In this depiction of events, the accused portray themselves as failing to meet Melanie’s demands.

Edmondson’s cross-examination by Brown’s lawyer Brayford in *R v Brown and Kindrat* gives a clear narrative of how the defence argue the events unfolded, positioning Melanie as the person in control, whose sexual demands intimidated the accused.

Brayford: Now, so this young lady is sort of half wrapped around you, you’re leaned against the back of the truck, and you’ve had a lot of beer to drink, a couple of Paralyzers, maybe three Paralyzers; correct?<sup>12</sup>

Edmondson: Yeah, approximately.

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<sup>12</sup> A Paralyzer is a popular Saskatchewan cocktail made up of vodka, coffee liqueur, cola, milk and a cherry.

Brayford: And she's the one that's been sexually aggressive?

Edmondson: Yes.

Brayford: And it's a little bit intimidating?

Edmondson: I guess, yeah.

Brayford: As I understand it, it was a situation where you weren't able to get hard enough to actually have intercourse?

Edmondson: Yes.

(R v. Brown and Kindrat, Vol. III: 619-620)

While Melanie is “wrapped around” Edmondson, Brayford describes the other two as “standing there” doing their best in “trying to get hard, so that maybe he - - maybe he could get lucky and get a turn” (R v Brown and Kindrat, Vol. III: 623). Failing to meet Melanie’s “intimidating” demands, according the accused, extended beyond her desire for them all to ‘make love’ to her. In another portion of Edmondson’s heavily guided cross-examination, Brayford says “and she was saying that she loved you guys and wanted to live with you guys and just saying some really unrealistic things?” Edmondson agrees. “And the - - at that point, the fairest word as far as her reaction when you said that she couldn’t move in with you was disappointment?” Edmondson agrees again (Ibid: 632). Brayford belabours the point as though Melanie were insisting she go home to live with these three men: “And eventually, when it was made clear, look, you can’t live with us, that she supplied you with a telephone number of a friend?” (Ibid: 633). Edmondson agrees again. Brayford concludes his cross-examination of Edmondson by asking one last leading question: “the only time that anyone was aggressive in this whole evening was when she climbed into you - - into your front seat, into your lap...and quite unexpectedly to

yourself, correct?” (Ibid: 631).

In chapter 5, I showed how the defence attempted to construct a scenario in which Melanie upset Mrs. Pierce by making sexual advances at her son such that Mrs. Pierce wanted Melanie taken away by the RCMP. The grander narrative of events portrayed by the defence is one in which Melanie is looking to escape her home, and is thus behaving in a sexually aggressive manner in the hopes that she will be rescued. Speaking to the jury, Edmondson’s lawyer Hugh Harradence says: “Ladies and gentlemen, on September the 30th, she [Melanie] was sitting on the steps of the Chelan bar. She was thinking, ladies and gentlemen, of ways that she could live other than living at home” (R v Edmondson, Final Arguments: 28). Brayford insinuates while cross-examining Edmondson that the behaviour observed by the Pierces when Melanie was dropped off at their home was Melanie acting out from ‘disappointment’ at being rejected by the accused when she asked to live with them (Ibid: 632). With the new knowledge that the DNA results matched Melanie’s father, Brown takes the opportunity in *R v Edmondson* a month earlier to help set up this narrative the next month in his own trial.

Parker: When you dropped her off, did she appear scared?

Brown: No. I didn’t think so. She was – no.

Parker: She was – did she appear frightened?

Brown: Believe she was frightened of her family.

Parker: Was she screaming at all? And, I’m talking about in the, in the time period immediately before drop-off, like, say the five to ten minute time period –

Brown: She kept saying that –

Parker: ‘Was she screaming?’ is my question.

Brown: She kept screaming not to – she did not want to go home. She didn't want to – don't go to her – or didn't want to phone the police – where she was.

(R v. Edmondson, Vol. III: 432)

Brown suggests in his testimony that the real source of Melanie's fear when she was dropped off at the Pierce home was her family.

In his closing arguments for *R v Edmondson*, Edmondson's lawyer Hugh Harradence recaps the evidence that Melanie was being sexually abused by her father. He then tells the jury:

It is little wonder, ladies and gentlemen, that Melanie Campbell ran away from home on September 30<sup>th</sup> as she had done numerous times before. Each time the police would catch her, as I understand the evidence in this trial, ladies gentlemen, each time the police would catch her and take her home.

(R v Edmondson, Final Arguments: 28)

As the source of Melanie's fear, her father is the reason Melanie left home and ended up on the steps of small town hotel bar. Additionally, her alleged sexual abuse by her father is considered the reason for her supposed sexually aggressive behaviour.

It was mentioned earlier that Dr. Somer at the Tisdale Hospital was unfamiliar with the process of conducting a sexual assault kit, hence the assistance offered by Degruichy. Because of her lack of experience, Dr. Somer wanted to send Melanie to someone who specialised in sexual assault, and specialised in examining underage youth. She knew of an expert in child abuse named Dr. Anne McKenna in the city of Saskatoon. Dr. McKenna worked on a high profile child sex abuse involving allegations of satanic ritual abuse said to have occurred at a home day care facility in the small Saskatchewan town of Martensville in 1992. The allegations of satanic ritual abuse were discredited in early 2003 and were in the news alongside *R v*

*Edmondson and R v Brown and Kindrat*.<sup>13</sup> Hugh Harradence was also involved as a defence lawyer for one of the accused in the Martensville case. Harradence begins his cross-examination of Dr. McKenna with reference to the source of their familiarity with one another.

Harradence: Dr. McKenna, other than your involvement in this case, it's been a number of years since we've been in the same courtroom, I believe, is that correct?

McKenna: That's correct.

Harradence: And I believe the last time that we were in the same courtroom was in 1993?

McKenna: In Martensville, yes.

Harradence: Right. And you testified in that particular case -

McKenna: Yes.

Harradence: - as to your expertise with children and pediatrics and tears to the hymens and things like that -

McKenna: Yes.

Harradence: - a much similar general area to what you're testifying to here?

McKenna: Yes.

Harradence: And in this particular case, Dr. McKenna, you testified for the defence, I believe; is that correct?

McKenna: Well, you might have thought so. I was actually testifying for the Crown, and I was crossed by yourself, but -

Harradence: Mmhmm.

McKenna: - all my answers couldn't have been better for your clients, so, -

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<sup>13</sup> See: Harris, *Martensville*.

Harradence: Well, it's amazing how it clouds the memory.

(*R v Edmondson*, Cross-examination of Dr. Eleanor Anne McKenna: 1-2)

Dr. McKenna's association with a high profile child sex abuse case and Harradence's suggestion that her speciality in that case with things like "tears to the hymen" is a "similar general area" to what she is testifying to in *R v Edmondson* shifts the focus of her testimony to discussing Melanie as the victim of child abuse at the hands of her father. As an expert in hymen tears, McKenna testifies that the tear to Melanie's hymen occurred "prior to sexual maturity" as the result of "prior sexual activity" (Ibid: 17). "If we assume," asks Harradence, "that the 12 year-old girl has actually suffered some assaults, some physical assaults, at the hands of her father, that is going to produce some trauma?" Dr. McKenna responds:

McKenna: It's going to produce some pretty major trauma.

Harradence: Major, especially if it's gone on for a period of time, it's going to produce some major trauma?

McKenna: It's going to produce interference in normal lifestyle.

Harradence: It may cause that child to – one of the things that a child might do is run away from home?

McKenna: Yeah.

(Ibid: 21)

Harradence pushes the conversation with Dr. McKenna about the kinds of behaviours children who suffer abuse in the home might exhibit, including unpredictable behaviour and exhibiting a lack of intellectual maturity. Eventually, he gets to the point of asking about abnormalities in the child's sexual behaviour.

Harradence: And, ma'am, if that 12 year-old child, ma'am, has been the victim of sexual abuse in the home-

McKenna: Yes.

Harradence: -that could produce some unpredictable sexual behaviour?

McKenna: It usually does, yes.

Harradence: Even aggressive sexual behaviour?

McKenna: That's – excuse me – that's one of the side effects, yes.

Harradence: That's well acknowledged in the literature, isn't it?

McKenna: Yes.

Harradence: And when a child has suffered sexual abuse in the home, the act out in a sexually aggressive manner?

McKenna: They may, yes.

Harradence: They may. Correct. And we've heard this, but it's actually accepted in the scientific literature, that children who suffer child sexual abuse at home, unfortunately a high percentage of them become prostitutes?

McKenna: A high percentage of prostitutes have been sexually abused, yes.

Harradence: As children?

McKenna: Yes.

(Ibid: 22)

Without the context from chapter 3 regarding the historical association of Indigenous women in white spaces and prostitution, the reason Hugh Harradence would be asking about the circumstances under which women become prostitutes would be difficult to make sense of. In a case where the lead investigator asks the accused if a 12 year old Indigenous girl (who the accused claims was drunk outside a bar and



looking for a ride) offered him “sexual favours for a free ride,” why Harradence is talking about prostitution makes perfect sense. While it is not explicitly owing to a biological hyper-sexuality, Melanie’s “aggressive sexual behaviour” is owed to sexual dysfunction she is seen to have inherited from her upbringing. With that said, Dr. McKenna does make mention of Melanie’s biology differing from that of many other twelve-year-olds. She tells the court that because Melanie had reached menses, unlike a lot of other twelve-year-olds, she looked older than her stated age and her physical development was consistent with that of an adult woman (R v Edmondson, Cross-examination of Eleanor Anne McKenna: 7-9).

The final words of the Crown’s argument in *R v Edmondson*, are a plea for the jury’s sympathy: “Melanie Campbell, we’ve learned, has not been treated fairly in life to date. I know you will treat her fairly today” (R v Edmondson, Final Arguments: 20). Though the jury finds Edmondson guilty, it is owing to “the very unusual and indeed, very tragic circumstances present in this case” that Justice Kovach concludes “a penitentiary term is not necessarily required” and Edmondson serves his time living at home, while maintaining his regular employment (R v Edmondson, Judge’s Sentence: 17). Justice Kovach understands the unusual and tragic circumstances of the case as follows:

From the evidence I have heard, Miss Campbell has been dealt a pretty bad hand in life. Her life up to September 30 of 2001 had been tragic. What happened to her on that date through absolutely no fault of her own was tragic and indeed, what has happened to her after that date, up to and including her testimony during both trials, was similarly tragic. By that I am referring mainly to the DNA testing results that came about as a result of semen being found on her panties, and it is as a result of that, her removal from her home and being placed in foster care. I gather from her Victim Impact Statement that she has still not been reunited with either her siblings or either of her

parents, and to that extent her personal tragedy continues.

That being said, and to the extent that what happened to her life prior to September 30, 2001 may have affected what she did or how she may have reacted to a situation on that date, is, in my opinion, at least a relevant consideration or relevant information for court to consider in sentencing.

(Ibid: 6-7)

Justice Kovach expresses sympathy for Melanie's situation and assures the court he believes what happened to Melanie was "through absolutely no fault of her own." However, he also believes what happened in her life up to that date needs to be taken into account when sentencing Edmondson. The situation at hand, says Kovach, is vastly different from "a situation where a 12 year-old is picked up off the street walking home from school against his or her will and forcibly sexually assaulted" (Ibid: 6). Conceiving of what happened to Melanie as her own "personal tragedy," Justice Kovach suggests there is only so much of her tragedy that Edmondson can really be held accountable for.

In Kovach's account, it is not Edmondson's fault that Melanie had a difficult upbringing that caused her to engage in risky behaviours like running away from home, accepting rides from strangers, and drinking beer with them (Ibid: 7-12). Nor can Edmondson be held accountable for her sexual aggression that follows from her previous abuse. It is not Melanie's fault either, in Kovach's estimation, but rather the cultural baggage she has inherited. In the next and final section of analysis I provide Melanie's account of events, which provide insight into how she was perceived by the accused, by the members of the community she and the accused encountered on the 30<sup>th</sup> September and, finally, the justice system. Far from "intellectually immature," as Harradence put it to Dr. McKenna, Melanie is well

aware of what is happening to her.

#### **D. In her own words**

Melanie's testimony counters the narrative of events as proposed by the three accused. Her testimony also problematises the testimony of Darlene Hill - the innkeeper in Mistatim who sold the group of four beer and snacks for the road just before the assault occurred. As stated in the introduction to this chapter, Melanie is told repeatedly to speak up. There are several breaks in her testimony, where Parker pauses to ask Melanie to move the microphone closer, or Justice Kovach takes a moment to ask her to speak not quite as softly, or the defence interjects to ask that Parker move further away from Melanie so that the defence table can see her and she will think to project her voice more. Some of these have reproduced below.

In a fashion not wholly unlike her behaviour at the Tisdale Hospital on the 30<sup>th</sup> of September being constructed as disruptive to evidence collection, the difficulty she has describing what happened to her frustrates the court. Most of the testimony referred to in re-telling Melanie's narrative of events in the trial comes from *R v Edmondson*. Melanie's testimony in *R v Brown and Kindrat* is quite limited because at one point, Melanie decides the circumstances are such that she cannot continue. In addition to including what Melanie did say, I will also explore the circumstances under which she chose not to speak in *R v Brown and Kindrat*.

As already described, Melanie tells the court that she ran away from home on the 30<sup>th</sup> of September 2001 because she had an argument with her mum. Melanie had been tasked with going to church with her younger brothers. Her older brother did not have to go: "I asked her why (INAUDIBLE) didn't go to church, and she got

mad at me” (Ibid: 49). She testifies that she waited until the evening, put on a black sweatshirt, put a bible in her backpack and left the house. Parker asks her for more details about why she left home:

Parker: Are you able to - - to expand on that at all, like, what were you trying to get away from, Melanie, on that day?

Melanie: I’m arguing with my mom all the time and just, I don’t know, just from everyone.

Parker: Sorry, I didn’t hear that.

Melanie: Just from everyone. I didn’t like arguing with my mom.

(Ibid: 51)

She explains that she walked the six or so miles along the highway to the nearest town called Chelan, and sat down on the cement step in front of the town hotel bar.

Parker: Why did you go to that location?

Melanie: Because there’s, like, nothing else open. It’s not very big.

Parker: I didn’t catch the last part, nothing else open?

Melanie: It’s not a very big town.

(Ibid: 54)

Like many small towns in Saskatchewan, the bar in Chelan is also a small hotel and among the only public dwellings in town. With a total population of roughly fifty people, Chelan is just a couple blocks long and a couple blocks wide.<sup>14</sup> Not only would the hotel/bar be the only thing open in Chelan when Melanie came into town that particular evening, but it might be at any given time the only place where she

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<sup>14</sup> Statistics Canada Government of Canada, “Statistics Canada: 2011 Census Profile,” February 8, 2012, <https://www12.statcan.gc.ca/census-recensement/2011/dp-pd/prof/details/page.cfm?Lang=E&Geo1=DPL&Code1=470019&Geo2=PR&Code2=59&Data=Count&SearchText=&SearchType=Begin&SearchPR=01&B1=All&Custom=&TABID=1>.

might sit that was not someone's home property. After telling Parker that she went and sat down on the steps of the bar because it was the only place open, she explains that it was getting dark so she was sitting there contemplating her next move. Parker asks, "and then what happened?"

Melanie: And then these guys came out of the bar and I remember one of them saying, "I thought Pocahontas was a movie."

Parker: How many guys came out of the bar?

Melanie: Three.

Parker: Three. And one of them said, "I thought Pocahontas was a movie"?

Melanie: Yeah.

Parker: Are you familiar with that movie?

Melanie: Yeah.

Parker: How did that make you feel?

Melanie: I don't know.

(Ibid: 54-55)

She identifies Brown as the one who made the comment about Pocahontas. Pocahontas, as mentioned in chapter 3, is the fantasy Indian princess that counterbalances the image of the squaw. In her foundational article titled *The Pocahontas Perplex*, Rayna Green describes the image of Pocahontas through the eyes of white male settlers as an Indian princess who "fall[s] in love with white travellers, often inviting them to share their blissful, idyllic, woodland paradise."<sup>15</sup> As Indian princesses, "they can help, stand by, sacrifice for, and aid white men."<sup>16</sup>

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<sup>15</sup> Green, "The Pocahontas Perplex," 709.

<sup>16</sup> Ibid., 710.

Likened to a Christian angel, the Indian princess is a mystical woman who can “heal white men.”<sup>17</sup> In the 2008 *R v Brown* trial, Melanie tells the court “he [Brown] said that I looked like an angel because I had glitter on my face” (*R v Brown*, Vol. III: 427). Green cautions, however, that it is only as long as “Indian women keep their exotic distance or die” that they remain on the ‘princess’ side of the binary.<sup>18</sup> “White men,” says Green, “cannot share sex with the Princess,” whose “sexuality can be hinted at but never realised.”<sup>19</sup> Green asks “who then becomes the white man’s sexual partner?”<sup>20</sup> All the power attributed to the Indian princess has its shadow side in the squaw. The squaw, says Green, is identifiable by her “alcoholic and sexual excesses.”<sup>21</sup> In the “presence of overt and realised sexuality” the Indian Princess transforms into the squaw.<sup>22</sup> It is clear at this point in the analysis how the image of the squaw surfaced in the trials. With Melanie’s insight into what happened on the 30<sup>th</sup> of September, we can see how she was transformed in the eyes of the accused from the Indian princess they encountered, to the manifestation of the squaw making claims of sexual assault. When they met her on the steps of the Chelan hotel bar, they were informed by fantasy images of Indigenous women that deny them full personhood and construct them only in reference to their interaction with white men.

Melanie says the comment about Pocahontas, the accused walked past her and got into Edmondson’s truck. They started to drive away, then, she says:

they back up a little bit and then he – and then he got out  
and asked me if I needed a ride, and I sat and thought

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<sup>17</sup> Ibid.

<sup>18</sup> Ibid.

<sup>19</sup> Ibid., 711.

<sup>20</sup> Ibid., 710.

<sup>21</sup> Ibid., 711.

<sup>22</sup> Ibid.

about it for a minute and I thought to myself this is the only way I'm going to get out of here, and it's dark and so I said okay. And I got in.

(Ibid: 57)

She tells Parker it was the first time she had ever accepted a ride from a stranger. When Edmondson started driving away, Melanie says he turned around and said "don't worry, you can trust us" (Ibid: 58). She is asked to describe how the accused looked, to which she says "I don't know, way older than me" (Ibid: 59). Once in the truck, she says the man sitting across from her in the backseat, who said his name was 'Fred' (who was Jeffrey Kindrat) "kept asking" her if she wanted a beer (Ibid: 59 and 61). She kept saying no, but then he asked "if I open it, will you drink it?" She said she would. He opened a beer and handed it to her. She confirms she had not consumed any other alcohol until then. She is asked what she told them about herself and she says:

I told them my name was Rochelle and I was 14 and I was from Saskatoon and – because usually I don't tell people I don't know who I am right away...and I didn't – just wanted to be older like my other – like my friends.

(Ibid: 61)

She says "Fred" (Kindrat) passed her a new beer "everytime I finished one." She says she does not know how many beers she drank, but it was "obviously, too much" (Ibid: 62). By the time they reached the town of Mistatim she says she felt "uneasy" (Ibid). Before they went in to the hotel bar where Darlene Hill worked, she says one of the accused said "he wanted me to come in the bar naked. He'd make sure everyone would give me money, but I kept saying no" (Ibid: 78). Parker asks her to repeat herself, and when she does she adds "I said no, because that's gross" (Ibid). She describes herself as feeling "dizzy" when they walked into the hotel bar in

Mistatim. She sat down on a bench while the accused approached the counter to purchase more beer and some snack food. The last thing Melanie remembers before feeling like she “fell asleep” was in the Mistatim bar.

We went in Mistatim, we went in the bar, and I know I felt like I was going to fall over. I got in there and I sat down and I remember they were talking to the lady and she – he said - or she said, ‘I’ll bet you don’t even know that girl.’

(Ibid: 63)

This is very different from Darlene Hill’s account in which she describes Melanie as at ease and smiling at other patrons while the accused are paying no attention to her. Given the work done in this thesis to demonstrate the degree to which boundaries between settler and Indigenous communities are policed, it should be evident that someone could plausibly look at the four of them in the bar and wonder how they all knew each other without the local knowledge that three white men purchasing booze-cruising supplies in the company of an obviously underage Indigenous girl is a curious grouping.

Darlene Hill’s description of events referenced in chapter 4 creates an image of “the boys” wanting some beer and some food to take on the road with them, about which she jokes she figured they must have missed supper and were filling up on bar snack food instead (R v Edmondson, Vol. II: 325). As a small town hotel bar owner in Saskatchewan, she is well-aware that booze-cruising is the activity that follows a group of young men buying a case of beer and snack food for the road. With the addition of what Melanie recounts from being in the Mistatim bar, and what was established in chapter 4 as normal booze-cruising activity, it is possible that Ms. Hill saw a young, intoxicated Indigenous girl in the company of the accused and shook her finger at them and rolled her eyes with the same degree of ‘boys will be boys’



sweetness about them missing supper and said ‘I bet you don’t even know that girl.’

Melanie says she does not remember leaving the bar and the next thing she remembered was “waking up” in the front seat of the truck with Edmondson kissing her and touching her, while the front passenger, Brown, was trying to pull her pants down and she was trying to pull them back up (R v Edmondson, Evidence of Melanie Campbell and Linda Somer: 65). She says she felt like she went back to sleep again. After a short ten minute recess in the courtroom and three pages of dialogue urging Melanie to continue, she says “I remember waking up with- with those guys doing – doing stuff to me” (Ibid: 68). Parker asks for more detail. She is able to tell him it that when she woke up two men were ‘doing stuff’ to her. Parker asks if she has a name for that stuff. She says “yes” but will not name what it is. Parker asks again, “can you answer that question, Melanie?” She says “no” (Ibid: 69). Parker continues to urge Melanie to tell the court what the accused did to her and she continues to respond by saying no, she does not want to talk about it. With 18 pages of dialogue in between, Parker gets somewhat frustrated with Melanie’s refusal to say what they did and the conversation comes to a head. Melanie says she “she can’t say it,” because she does not “like saying it”

Parker: Well, I appreciate that you don’t like saying it, but here today, the jury is here, the judge is here and this is the day that I must ask that you say what it is that occurred, and I think you understand that?

Melanie: Yeah.

Court Clerk: Could you speak up, I’m having a hard time-

Parker: I think you understand, Melanie, that today is the day that I must ask you to say it. You understand that, don’t you Melanie?

Melanie: Yes.

(Ibid: 87)

For the sake of everyone who came to court that day, Parker is asking Melanie to speak. At what seems like a poorly timed moment, the court clerk interjects to ask Melanie to speak louder. After a page of starts and stops, and Parker asking Melanie to take big deep breaths, she says “they were sexually touching me” (Ibid: 88). Parker asks where the accused were in relation to her, and she says she cannot say it.

Parker: And the reason you can’t say it to the jury is what, Melanie?

Melanie: I don’t know, I just can’t say it. It makes me feel stupid.

Parker: It makes you feel stupid? Well, no one thinks you’re stupid, Melanie.

Harradence: Did anyone hear that last answer other than the last words, she thinks she’s stupid?

Parker: She said, ‘It makes me feel stupid.’

Justice Kovach: Ladies and gentlemen, my previous comment still applies. If you’re unable to hear what’s being said, please indicate that to me, I’ll watch you, okay. Were you able to hear Mr.-

Harradence: I’m sorry, My Lord, I was unable to hear, I shouldn’t have phrased it that way.

Justice Kovach: Melanie, I realise it’s difficult, Melanie, but it is important that whatever you do say, everyone here is able to hear, all right.

Melanie: All right.

Justice Kovach: And if you please try and speak into the mic, then you don’t have to speak as loudly because it’s amplified. Please, if you would, Melanie, go ahead, Mr. Parker.

Parker: Thank you. You said they were sexually touching you. And what part of their bodies were they using to

touch you?

Melanie: [NO AUDIBLE RESPONSE]

(Ibid: 89-90)

With more poorly timed, and poorly phrased interruptions, Melanie gets as far as telling Parker they were sexually touching her “lower private part” and gets her to write down on a piece of paper what part of their bodies they were using to touch her. He spells out what she has written on the piece of paper for the benefit of the courtroom, which is “p-e-n-u-s” (Ibid: 91). As mentioned previously, the testimony of the accused describes Edmondson sitting on the front bumper of the truck with Melanie on his lap and Brown and Kindrat taking turns coming up behind Melanie. Melanie corroborates this in the later *R v Kindrat* and *R v Brown* trials in 2007 and 2008, ultimately explaining that she was crying and unable to move sandwiched between them when she gained consciousness outside the truck after leaving Mistatim. Edmondson vaginally penetrated her, while Brown anally penetrated her, and she was in so much pain and blacking out in waves that she was not sure what exactly Kindrat had done (*R v Brown*, Vol. III: 420-422, *R v Kindrat*, Vol. I: 100-104).

She does not remember being taken to the Pierce residence, or being taken to the hospital. She remembers small portions of the sexual assault kit being performed, her only memory of which was that she was screaming. When she woke up in the hospital the next morning, she saw that her dad had stayed with her overnight. She pretended to be asleep until he left the room and then called the nurse in to ask her to not let anyone in the room. Parker asks Melanie why. Melanie says “I didn’t want to see anyone, I felt embarrassed” (*R v Edmondson*, Evidence of

Melanie Campbell and Linda Somer: 76)

In *R v Brown and Kindrat*, the same dynamic exists where Melanie is struggling to tell Parker what happened, and their dialogue is continually interrupted by requests that Melanie speak louder, move the microphone closer, answer the questions posed to her, et cetera. Parker asks Melanie to identify Jeffrey Brown in the courtroom. She does not respond to Parker's request and repeats instead that her stomach hurts. The final time Parker asks if she can "get that done," if that is "something you're able to do, Melanie," if she could please identify Brown, the front passenger in the truck, she says directly "no" (*R v Brown and Kindrat*, Vol. II: 379). When asked why not, she tells Parker "I don't want to look at him." He asks why not and she says "because I'm scared" (*Ibid*). Parker tries to reassure her by telling her Brown "can't do anything to you, Melanie. There is a policeman (inaudible). There is a Judge here" (*Ibid*). Brown's defence lawyer, Brayford, rises to object and Justice Kovach asks the jury to leave the room. "With all due respect," Parker says "she says she's afraid" (*Ibid*: 380). Brayford contests that his client, Mr. Brown:

...never threatened her on that occasion and hasn't since, and I mean if she wants to say that she's afraid of him, so be it, but she just is uncomfortable about looking at him. . . that's a whole different element than – what the offence is here.

(*Ibid*)

Kindrat's lawyer Mr. Eisner says Parker's suggestion that she ought not be afraid because there were police officers and a judge in the room was "very inflammatory to the defence" with the inference being "that these people could break out of this box any time and attack people and that's why we've got the policeman here to guard them" (*Ibid*: 380-381). He goes on to suggest the defence has already been

very lenient with the manner in which Melanie is being questioned and repeats that this last exchange was “extremely inflammatory and it’s extremely unfair, and because we’ve got a young child here, defence is reluctant to rise on the leading, of which there has been more than a little. Thank you” (Ibid: 381). Parker apologises, saying “if it was inappropriate, I stand to be corrected. I have a child here . . . who is collapsing within herself. She has indicated – I mean, she can’t lift her head to look” (Ibid).

Justice Kovach is not convinced of the legitimacy of what Melanie has expressed and says in response to Parker “just on that point . . . I’ve had the benefit of having observed this witness on another occasion, and in the absence of the jury and in her absence I know that she can become quite aggressive, particularly under cross-examination” (Ibid). He continues on to say “I know she is capable of being much more assertive and aggressive and self-confident than she’s demonstrating on this occasion” (Ibid: 381-382). What Kovach remembers as “more assertive and aggressive and self-confident” is difficult to discern amidst reading Melanie’s examination and cross-examination, during which she is continually interrupted and asked to speak louder and provide more detail.

The most forthright Melanie was during Edmondson’s trial was when Hugh Harradence suggested under cross-examination that her story might have been changed because of the visitors who came to see her after the assault. Most notably, her uncle who spoke out about the way Melanie had been treated; Chief Albright from the Federation of Saskatchewan Indian Nations; chiefs from her mother’s home reserve, and; a reporter from the *Globe and Mail*. With the context of Harradence having interrupted her cross-examination a few moments prior by asking if anyone

heard what she said other than that she thought she was ‘stupid’, Melanie resists Harradence’s attempt to suggest she was coerced:

Harradence: There were a number of people that were making suggestions to you as to what happened to you?

Melanie: They weren't making suggestions, they were trying to help me.

Harradence: Okay. Well, how were they trying to help you, Melanie?

Melanie: I don't know. They were trying to be there for me and trying to help me get through it.

Harradence: Okay. Were they trying to help you remember the details of what happened to you?

Melanie: No, they were just trying to, I don't know –

Harradence: Okay.

Melanie: -- they weren't telling me what to say --

Harradence: No, I –

Melanie:-- because I knew what happened. I'm not stupid.

Harradence: Sorry?

Melanie: I said I know what happened.

Harradence: You said something else?

Melanie: And I'm not stupid.

Harradence: I'm not suggesting that at all, Melanie, not for a second.

(R v Edmondson, Cross-examination of Melanie Campbell: 14)

Shifting back to Melanie saying she was afraid to look at Brown in *R v Brown and Kindrat*, Justice Kovach introduces the idea that Melanie has perhaps taken some “medication” that day that might be responsible for what he has observed as her

“acting a bit differently on this occasion than she did before” (R v Brown and Kindrat, Vol. II: 382). Kovach goes on to address Parker directly regarding the matter of Melanie expressing fear, and echoes Brayford’s frustration with Melanie’s difficulty answering questions:

Justice Kovach: The concept of whether or not she’s afraid, you’re well aware there’s been no suggestion that she was harmed, that there was any physical violence involved in any of these proceedings, and she acknowledged that in cross-examination on previous occasions, at least to the extent that she’s scared of anyone. And I do think it’s inflammatory or prejudicial to be raising the fact that there is a police officer here to guard you, if necessary, in front of the jury. That causes - - Parker: Okay.

Justice Kovach: - - and I don’t want to be interjecting all the time with her - -

Parker: I’ll certainly refrain from anything further, but I, with all due - -

Justice Kovach: Well, it’s a question of where we are, as a result of raising it now - -

Parker: Right.

Justice Kovach: - - like, you know, and I don’t want now whether counsel have further submissions to make in that regard or not. Like, that concerns me.

(R v Brown and Kindrat, Vol. II: 382-383)

The matter is tabled for the moment, and the jury re-enters. Melanie’s testimony continues. Parker struggles to get Melanie to speak at all, and again she says she is unable to answer the questions posed about what the accused did to her. She does not manage to say anything with regards to the sexual assault, and her testimony ends with Parker, exasperated, asking:

Parker: Will you say it, Melanie, or are you just going to sit there in silence? I can’t make words come out of your

mouth, and I won't. It's up to you, but I would like to know if you tell us?

Melanie: No.

Parker: You won't?

Melanie: [NO AUDIBLE RESPONSE]

Parker: Do you have anything to add, Melanie?

Melanie: No.

Parker: Okay. I have no further questions, My Lord.

(*R v Brown and Kindrat*, Vol. II: 396)

Melanie decides her best course of action is to speak to no more after having Harradence in *R v Edmondson* stand and proclaim “she thinks she’s stupid,” while asking that she be directed to please speak up time and again (*R v Edmondson*, Evidence of Melanie Campbell and Linda Somer: 89); Justice Kovach questioning whether her odd behaviour in *R v Brown and Kindrat* is owing to having taken some medication because he knows “she can become quite aggressive” when he has observed her in other scenarios, and “especially under cross-examination” (*R v Brown and Kindrat*, Vol. II: 381); and then finally Justice Kovach asserting her expression of fear is incomprehensible because “there’s been no suggestion that she was harmed, that there was any physical violence involved in any of these proceedings” (Ibid: 382-383 and 396).

The media reported in 2004 that “lawyers on both sides agreed the girl’s reluctance to testify against the pair was the turning point in the case,” and a large part of the reason Brown and Kindrat were acquitted. “In Edmondson’s trial,” says



the newspaper article, “she gave much more detail.”<sup>23</sup> As noted above, Melanie provided the court with even more detail in the 2007 and 2008 trials when she was testifying as an 18 year old. Still, both Brown and Kindrat avoided conviction. It was not what Melanie failed to say, but rather what the court failed to hear, and failed to believe because of Melanie’s construction as a gendered, raced and spaced other in white settler society.

## Conclusion

In this chapter I described how Melanie was constructed as an intoxicated, loud and obnoxious Indigenous girl. I described the multiple levels at which she was denied her bodily integrity, and treated as a nuisance by the justice system. I described how Melanie, her family, and her community, were ultimately held responsible for what was portrayed as the supposedly high-risk activity that she engaged in that resulted in her sexual assault. Finally, I showed how she was constructed as the sexual aggressor because of previous abuse that resulted in the courtroom reimagining her as the contemporary squaw – a victim of her own cultural inheritance, seeking rescue.

I finished the analysis with Melanie’s counter-narrative of what occurred. Her narrative demonstrates that the accused saw her through a filter of fantasy images of Indigenous women that deny them full personhood. Her construction of events calls into question the sincerity of Darlene Hill’s testimony when tells the court she thought nothing of seeing the accused with Melanie in her bar. I showed how Melanie was not listened to, and how her reality of fear was denied and

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<sup>23</sup> Canadian Press, “Crown Appeals Sex Assault Acquittals.”

diminished. Ultimately, Melanie resisted by refusing to speak. I have talked about how the accused come to know who they are in settler colonial society based on their unquestioned right to freedom of movement on the land, inscribing their mastery over it and the Indigenous bodies therein. Likewise, being sexually assaulted at the age of twelve, being taken to the hospital and having a sexual assault kit administered without consent, and having to testify in multiple trials, is a process through which Melanie has come to know who she is in settler society.

Melanie tells the court in her Victim Impact Statement how she feels and what she has learned from this experience. I reproduce what was read into court on her behalf by Parker with no interruption:

I feel very violated, angry and sad. I feel violated because I was hurt in places and touched in places I didn't want to be touched. They took something away from me that I will never get back. I'm very sad because I never thought that anything like what happened could ever happen to me. I wished now that I was more careful and responsible for what I do and choose.

What happen to me I had to get a lot of help and had to do lots of grown up stuff so it made me feel like I had to grow up fast everyone treated me different. People didn't know what to say to me they looked at me different. It made me feel out of place like I didn't belong there. Some of my friends didn't want to be friends because of it.

I was hurt physically on my body I had cuts, bruises. I was very sore all over my body. My school the year that happened I missed over half a year of school I couldn't concentrate. I was depressed all I could think about was that night. I was always feeling sick and sad, worthless all the time.

I had bad dreams about what happened I cried because I was always scared. I couldn't sleep good.

My family was very upset they didn't treat me like a little girl anymore. I quit playing sports. My family kept saying they knew how it felt but I didn't think so until it

happens to them. I never thought anything could ever happen to me - that's why I wasn't careful. But now I'm scared of older men I don't like even being close to older guys they make me very nervous. At night I won't go out unless I'm with someone or I'm very scared and paranoid. When I think about it, it makes me sad and I wish that I never ran away from home that day. And things could of been different because I could be home. But I can't because my Dad is also getting blamed for something he didn't do.

(R v Edmondson, Vol. IV: 749-750)

What Melanie does not add in her Victim Impact Statement is that she was hospitalised for attempting to commit suicide by overdosing on pills when she had been removed from her home and placed in foster care. In a 2008 media report, she is described as having spent all her teenage years “as a witness testifying in various trials and re-trials” against the three men, and was also “in and out of psychiatric wards and foster homes.”<sup>24</sup> In chapter 3, I quoted Sherene Razack as saying the following about raced, spaced and gendered others bringing attention to sexual violence:

...when we bring sexual violence to the attention of white society we always risk exacerbating the racism directed at both men and women in our communities. In this way, we risk being viewed by our own communities as traitors and by white society as women who have abandoned our communities because they are so patriarchal.<sup>25</sup>

Razack's words are so accurate so as to be prophetic. It is not, however, prophecy. What Sherene Razack knew when she wrote these words, and what has been demonstrated in the analysis chapters of this thesis, feeling out of place, feeling fear and paranoia, feeling limited in the freedom to move around on the land, feeling

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<sup>24</sup> Purdy, “Young Sex Assault Victim Spent Seven Years in Court, Finally Moving on.”

<sup>25</sup> Razack, *Looking White People in the Eye*, 58–59.

worthless, feeling disconnected from family, is precisely what settler colonialism looks like when manifested in the lives of raced, spaced and gendered others. Far from Melanie's behaviour indicating what Harradence says is a lack of intellectual maturity, Melanie's response to what she survived is a normal response to a society that would seek to deny her bodily integrity, construct her as physically more mature than peers her age and also sexually aggressive, owing to her abusive family background. Like the depiction of the "lewd and licentious" squaw that came before her, Melanie is constructed as a victim of her own Indigeneity.<sup>26</sup> I proposed here that Melanie's account of events be heard and be believed.

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<sup>26</sup> Carter, "Categories and Terrains of Exclusions: Constructing the 'Indian Woman' in the Early Settlement Era in Western Canada," 147.

## Chapter 7 Conclusion

I concluded the final chapter of analysis by proposing that, within the trial narrative, Melanie's account must be heard and be believed. Her account of events provides the clearest path for understanding the tangled web of expertise and regulatory actors that come to dominate white settler society. By believing her, we can see the anxiety of a settler society, frightened of the truth she tells us about ourselves: our settler society is one in which average young white men brutalise Indigenous women as a way of living out a fantasy-adventure story in which they play the protagonists. Everyone else is constructed in reference to them, especially the Indigenous women and girls they choose to attack. Melanie has also shown us how white settler society reinforces that while these young men were, perhaps, irresponsible in their actions, their poor behaviour is constructed as no more than alcohol consumption and peer pressure, rather than as an act of racialised gender violence that confirms their identity as white male settlers.

Razack says, "we may know how colonisation changed Aboriginal people, but do we know how it changed, and continues to change, white people?"<sup>312</sup> In conclusion, I offer that by answering the research questions set out in this thesis, I have provided some insight into the effect of colonisation on white people and have shown one possible way in which we can "seek to walk a path of social justice."<sup>313</sup> Below, I first give a brief summary of my thesis, providing the road map for how I arrived at the answers to the research questions. In the final section, I will answer the research questions. In so doing, I will speak to the methodological and analytical contributions of the research, as well as address the social and political ramifications

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<sup>312</sup> Razack, *Looking White People in the Eye*, 19.

<sup>313</sup> *Ibid.*, 22.

proposed by the conclusions I draw.

## Thesis Summary

In chapter 2, I provided a selective history of the West in Canada. I demonstrated how the oppression of Indigenous people in the West was interconnected with asserting Canadian control over the West, which was for the purposes of making the region an extractive resource base in service to the larger nation-building project. In asserting control over the region, Canadian absorption marked a point of fracture in western Canadian identity where the incoming settlers did not see themselves connected to the struggles of the region's earlier inhabitants. This was in spite of the similarities between their respective struggles for autonomy and self-determination.

This point of fracture was shown to be owing to nation-building narratives that were rooted in 'benevolent' westward expansion, narratives that attempted to justify the destruction of the West as a place populated by a 'primitive' people; the region could be filled with rugged agrarian settlers whose productive labour on the land would be a service to the Canadian nation. Finding themselves frustrated by the colonial relationship between East and West, a growing sense of regional alienation developed amongst agrarian settlers in the West. In re-asserting that the West has a legitimate claim to decision-making in Canada, the expression of western alienation oftentimes re-inscribes the legitimacy of settler claim to the land at the expense of Indigenous people. I argued that from the historical record as told through nation-building narratives, it is difficult to extricate a western Canadian identity as separate from settler identity.

In the latter part of chapter 2, I showed that the patriotic need to maintain the

idea of Canada as a fundamentally benevolent nation creates a contemporary problem when one reflects upon historic westward expansion. I explored the work of John Ralston Saul as an eminent Canadian philosopher who seeks to reconcile Canadian benevolence with westward expansion. Saul manages to reconcile the two by seeing that westward expansion was largely attributable to the settlers themselves who were eager to move the Indigenous people out of the way so that they may take up their lands. Saul makes the consolation that en masse Canadian sponsorship of such a perspective is now something of the past, and with this negativity in the rear-view mirror, Canada is now returning to its original model as a ‘métis civilisation,’ as evidenced by the complex mixing of people from a variety of backgrounds, to be found mostly in Canada’s large cities.

Saul’s attempt at a version of national unity that maintains Canada’s benevolence does so at the expense of locating western settlers as the cause of westward expansion. In so doing, he situates the West as, once again, peripheral to Canada’s contemporary civilisation that he says is to be found in Canada’s largest cities. Keeping with the themes explored in this thesis, Saul’s blindness is indicative of his privilege. Locating responsibility for westward expansion with the western inhabitants themselves grants him the privilege of maintaining the benevolence of his part of the country as Canada’s true ‘civilisation,’ at the expense of another part of the country. While Saul may judge the West as peripheral to Canadian civilisation – the West housing none of the large cities that are the centres of civilisation he speaks of – maintaining the West as a peripheral frontier is critical to maintaining blindness to that which unites us all as Canadians. We all live on Indigenous land in a settler colonial society. Settler colonialism is not a part of our past, a past that is still

working itself out in ‘less civilised’ areas of the country. Settler colonialism is, rather, a structure that is deeply woven into the Canadian fabric, and it is more readily evident in the contact zones between settler and Indigenous populations that Saul describes as peripheral to Canada’s ‘métis civilisation’.

In chapter 2, I identified a conflation of western identity and settler identity. Following on from this, in chapter 3 I theorised the concept of settler colonialism and suggested that its functioning is best understood with an analysis rooted in Razack’s concept of interlocking systems of domination.<sup>314</sup> By theorising settler colonialism through an understanding of interlocking systems of domination, I was able to create a methodological framework through which I could identify how settler colonialism is manifested across lines of race, space and gender in the trials of *R v Edmondson* and *R v Brown and Kindrat*. This interlocking approach also speaks to how difference is constructed in the courtroom with reference ‘culture talk’. I explored the process through which I identified the three key themes in the trials that became the bases for chapter 4, 5 and 6. These themes were: normalising the behaviour of the accused, constructing the truth from the accounts of the accused, and othering Melanie.

In chapter 4, I showed how the behaviour of accused on September 30<sup>th</sup> as young white men booze-cruising, moving from small town bar to small town bar, was considered normal leisure activity in the space of rural, white Saskatchewan. As understood across interlocking lines of race, space and gender, I further identified that the activity of booze-cruising and collectively sexually assaulting an Indigenous girl represents a process of male social bonding and identity-making in white settler

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<sup>314</sup> Razack, *Looking White People in the Eye*.



society. I argued that booze-cruising is a way in which young white men come to know who they are in white settler society as they re-assert their capacity to move between boundaries of civil, urban spaces and unpopulated areas of wilderness unharmed. It serves to reinforce their identities as rugged white settlers with mastery over land and as having the unquestioned right to move freely on that land. I demonstrated that the events on the 30<sup>th</sup> of September exist within a broader context in which young white men routinely pick up Indigenous women and girls as part of their booze-cruising adventures and sexually assault and, oftentimes, murder them.

The privilege afforded the accused by the extent to which their leisure activity of booze-cruising is normalised meant that there was no expectation that they explain what business they had engaging in the illegal activity of drinking and driving. Rather, their alcohol consumption was read as part of a normative practice of collective male bonding and served as the scapegoat for understanding how these otherwise perfectly nice young men ended up sexually assaulting a twelve year-old girl. Their assault on Melanie was also identified as a practice of homosocial bonding amongst the accused. Privileging their homosocial bonding activity was shown to justify their blindness to the activities of their co-accused, based on the ideation that seeing another man's penis would transgress the boundaries of normative, heterosexual masculinity. Drawing from McNinch's work on homosocial bonding, imprecise articulation is seen as a way in which the accused are identifiably privileged by comparison to Melanie. Where norms of heterosexual masculinity are implicitly understood, the accused's privilege is evident in the lack of explanation required of them in describing the sexual assault they perpetrated.<sup>315</sup>

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<sup>315</sup> McNinch, "‘I Thought Pocahontas Was a Movie’: Using Critical Discourse Analysis to Understand Race and Sex as Social Constructs.”

The concept of imprecise articulation carries forward into chapter 5, where the accounts of the accused are constructed as the truth of what happened, in spite of inconsistency and imprecision in their accounts. Working in tandem with the reasonableness afforded settler blindness, the accounts of the accused are actively reconstructed in the courtroom by Justice Kovach as logical and consistent. The unshakeable truth of the accused as good and decent young men who are well-known, well-liked and well-respected in the local community constructs the events on the 30<sup>th</sup> of September as anomalous. Their bad behaviour represents only an isolated incident, caused by excess alcohol consumption and peer pressure. I noted that in a legal system focused on assessing individual responsibility, they are all independently the victims of peer pressure, with no one of them being constructed as its actual source. The phantom source of peer pressure serves to distract from the violence the three men collectively perpetrated against Melanie.

The latter portion of chapter 5 compared the constructions of the accused as community insiders against Melanie's construction as an outsider. I showed how Melanie was deemed physically out of place in the white space of the Pierce family home where the accused dropped her off. Melanie was identified as the source of the 'unusual' circumstances that visited the Pierce home that night. The defence went to great lengths to portray Melanie as particularly offensive to Mrs. Pierce, who was conveyed as being upset by a comment, interpreted by the defence as sexual in nature, which Melanie made to Mrs. Pierce's son. Melanie was constructed as disruptive to the civility of white space, with the defence attempting to insinuate that she was a nuisance to the Pierces, who wanted the RCMP to pick her up and take her away. From her construction as an outsider whose presence was disruptive to white

space, I connected the story told by the defence of Melanie's presence at the Pierce home to broader narratives of the threat of the squaw to the civility of white settler space, and a colonial pre-occupation with cleansing Indigenous women's bodies from white space by forcible removal facilitated by the RCMP. While the historic construction of the squaw is based on a perceived biological inferiority, I note that the association of Melanie with the stereotype of the squaw is rather one based on a perceived cultural inferiority. In this construction, Melanie is a victim not of her biological, primitive sexuality like the historic squaw, but rather she is constructed as a victim of her abusive cultural heritage, which causes her to act out in sexually aggressive ways, seeking the attention of another men so that she might be saved from her backwards culture.

In chapter 6, I revisited the image of the squaw, providing for a fuller picture of how Melanie is constructed as the sexual aggressor. Her depiction as such is constructed as the result of an abusive upbringing that situates her father as the true perpetrator of the crime. Her father is believed to be the cause of Melanie's sexually aggressive behaviour which led to her, by the accounts of the accused, throwing herself at them. Linking her identification as a run-away to the broader conversation about the number of missing and murdered Indigenous women across Canada, I explored how Melanie is constructed as a nuisance to the criminal justice system, and how she is thus made complicit in her own victimisation. I described how Melanie, her family, and her community, were ultimately held responsible for what was portrayed as the supposedly high-risk activity that she engaged in that resulted in her sexual assault. Unlike the accused, for whom the night of September 30<sup>th</sup> is understood to be anomalous, for Melanie it is constructed as part of pattern of bad

behaviour, owing to a dysfunctional and abusive upbringing, that ultimately caused Melanie to be sexually assaulted. I show the numerous levels at which Melanie is denied her bodily integrity and is dismissed as an intoxicated, 'loud and obnoxious' Indigenous girl.

I conclude the analysis as a whole with Melanie's counter-narrative of events. Her narrative calls into question the testimony of Darlene Hill, a local who saw her with the three accused and claims she thought nothing of it. More poignantly, Melanie's version of events as told through her testimony signals that, to the accused, she was a being of fantasy rather than a realised person. As part of their booze-cruising adventure, they encountered her as an image they constructed from colonial fantasy; that of the Indian princess. When the accused's fantasy became an accusation of the sexual assault of a child, Melanie herself was transformed into the image of the squaw. Rather than supposing it was consistency indicative of truth that all three men named Melanie as the sexual aggressor, we can readily deduce instead that it was simply the case that the accused all held the same derogatory cultural belief about Indigenous girls. Melanie's voice was not heard, and not taken seriously in the courtroom.

Like the fantasy images of the Indian princess and the squaw, she was made sense of not through her own words, but by the reference to the descriptions of the white men who encountered her while they were out "experience[ing] themselves as colonisers and patriarchs, that is, as men with the unquestioned right to go anywhere and do anything to the bodies of women and subject populations they have conquered."<sup>316</sup> I concluded the final chapter of analysis with Melanie's Victim

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<sup>316</sup> Razack, "Gendered Racial Violence and Spatialized Justice: The Murder of Pamela George," 136.

Impact Statement. It is a powerful articulation of what life feels like for her in a settler-colonial society. She expresses feeling out of place, feeling fear and paranoia, feeling limited in the freedom to move around on the land, feeling worthless and feeling disconnected from family. It is clear that the lessons she has learned about her place in white settler society are profoundly different from those of the accused. While imprecise articulation was indicative of the privilege of the accused – where their gaps were filled to create consistency and cogency in a narrative that by default benefitted them – silence was Melanie's means of resistance and survival.

## Research questions revisited and contribution

We, settler Canadians in the West, make sense of the disparity between Indigenous and settler populations as being caused by Indigenous deficiency. In reading the history of the region, we can see the legacy of this thought process from the nineteenth century onwards. From the history we can also see the development of regional alienation due to the construction of the West as a frontier land, peripheral to civilised Canadian identity at its core. I identified that the West is constructed as peripheral to the core in contemporary renditions of Canada's national unity as part of the image of a nation that abhors the violent westward expansion of the past. I argue that the commitment to maintaining a reality in the West in which settler presence is believed to be the result of inevitability and benevolence is exacerbated by a sense of regional alienation in which the unquestioned right of the settler to be in the West is one in the same as having a legitimate place in the construction of Canadian identity. The analytical contribution of this thesis framed in the argument that maintaining the West as peripheral provides for a logic in which Canada's

colonial history is seen to emanate from the space of the West, rather than seeing that the West is the product of a settler colonial legacy that belongs to, and needs to be reconciled by, all Canadians. The West as peripheral provides a scapegoat through which Canadians can continue to imagine the nation as benevolent.

Through an analysis of the trials *R v Edmondson* and *R v Brown and Kindrat* I identified that the process and outcome of the trials were the result of broader societal processes and power relations best understood through Razack's concept of interlocking systems of domination. I demonstrated through the analysis of the trial transcripts how privilege and oppression were made evident in the trials, and how differences between Indigenous and settler communities were constructed with reference to interlocking lines of race, space, and gender. I showed the manifestation of privilege and oppression and the construction of difference between settler and Indigenous by identifying how the behaviour of the accused was normalised; how the version of events provided by the accused was constructed as the truth, and; the process through which Melanie was constructed as other.

Following from the methodological approach explored in chapter 3, these themes are indicative of the broader settler colonial context in which the trials took place. The methodological contribution of this thesis was an analysis in which the explanatory power of the trials was seen as their location at the centre of a tangled web of expertise and regulatory actors. This complicated my analysis of the trials, allowing me to move beyond constructing the process and outcome of the trials as the result of the people in the trial being racist, or sexist.

The social and political implications that follow from answering these research questions is that constructing the West as Canada's continuing frontier

actively supports the logic of settler colonialism. By identifying the West as the place where Canada's colonial history continues to be enacted, it is important to conceptually remove the idea that the West is the cause, or the colonial leftover from what is 'history' to the rest of Canada. The commentators mentioned in the introduction to this thesis, frame the issue as one emanating from the backwardness of the peripheral West. In locating blame with the place of the West, there are appeals to the nation to "bring the Mississippi of the North, kicking and screaming into the twenty-first century" as though the West being brought into the present through the civilising force of the Canadian government was not the justification for westward expansion in the first instance. For the part of western settlers, it is incumbent upon us to extricate our collective, regional identity from its place in the mythology of the nation. I suggest we do this by listening to, and believing, the counter-narratives that challenge our uncritically accepted mythology of ourselves as the embodiment of rugged white settlers. I have sought to do so here by engaging with Melanie's account, taking note of her voice and her silence, which holds profound insight for understanding the oppressive power of settler-colonialism.

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